



LCA/203/2008

LANDS TRIBUNAL ACT 1949

COMPENSATION – Land Compensation Act 1973 Part I – jurisdiction of Lands Tribunal to entertain a reference – whether the claims pursued had previously been compromised

**IN THE MATTER OF A NOTICE OF REFERENCE
UNDER LAND COMPENSATION ACT 1973**

BETWEEN

MICHAEL HENRY SCHOLES

Claimant

and

KIRKLEES COUNCIL

**Compensating
Authority**

**Re: 132 Fort Ann Road
Batley
West Yorkshire
WF17 6LS**

Before: His Honour Judge Huskinson

(PRELIMINARY ISSUE DETERMINED UPON WRITTEN REPRESENTATIONS)

The following cases are referred to in this decision:

Bell v Galynski and Kings Loft Extension Limited [1974] 2 Lloyd's Rep 13

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DECISION

Introduction

1. This decision is only concerned with an issue, which was ordered by the President on 9 July 2008 to be determined as a preliminary issue, as to whether this Tribunal has jurisdiction to determine the claim made by the Claimant in this reference for compensation under the Land Compensation Act 1973. The parties have agreed that the matter be determined upon written representations. After the matter was first allocated to me for decision I caused a letter dated 25 September 2008 to be sent to both parties inviting them to make further representations and submit further documentation upon certain points. Such representations were in due course received.

2. The present reference to the Tribunal was made by the Claimant on 21 January 2008. The reference sought the determination of compensation payable by the Compensating Authority under the Land Compensation Act 1973 Part I in respect of 132 Fort Ann Road (“the Property”). There appears to have been sent with the reference some supporting documentation in manuscript prepared by the Claimant setting out his statement of case. It is notable that the reference given at the top is LCA/67/2006, which is an earlier reference to the Tribunal to which reference will be made below.

3. The Claimant’s statement of case indicated that the Claimant was pursuing a claim for compensation for depreciation in the value of the Property arising from physical factors caused by the use of the following public works, namely:

- (1) Grange Road extension and new road construction (Challenge Way) to form M1, M62 link road to Batley.
- (2) The construction of Mill Forest Way.
- (3) The extension of Fort Ann Road (including the construction of a turning area).

4. On being notified of this 2008 reference, the Compensating Authority took the point that there had been an earlier reference before the Lands Tribunal in which the same claims had been advanced by the Claimant and that these claims had been settled and that therefore the Tribunal had no jurisdiction to entertain the present reference.

Facts

5. On 7 August 1996 the Claimant submitted a claim to the Compensating Authority for compensation under Part I of the 1973 Act in respect of “Batley M1-M62 link road (Grange Road – Challenge Way) slip road from same”. On 7 November 2000 the Claimant made two separate claims to the Compensating Authority for compensation under Part I of the 1973 Act,

one claim being in respect of “New Road. Mill Forest Way, Batley” and the second claim being in respects of “extension of Fort Ann Road to form turning area and car park spaces”.

6. It appears that slow progress was made in respect of negotiating these claims. In due course the Compensating Authority decided to make a reference (as it was entitled to do) to the Lands Tribunal for the compensation to be determined. The Compensating Authority did so by a reference dated 2 May 2006, which apparently had attached thereto copies of the three separate written claims under the 1973 Act Part I as referred to in the previous paragraph. This reference to the Lands Tribunal was given number LCA/67/2006.

7. In due course the Claimant submitted a statement of case in identical terms to the claim submitted as part of the present reference LCA/203/2008. Indeed the statement of case attached to the present reference appears to be a photocopy of the Claimant’s statement of case as submitted with the 2006 reference.

8. The Compensating Authority on 30 October 2006 submitted a reply to the Claimant’s statement of case, but this did not set out any proposed compensation in respect of each of the separate heads of claim.

9. It appears there were negotiations between the parties (as to which I have no evidence by way of a witness statement or otherwise) which led to the Compensating Authority writing a letter to the Claimant dated 2 November 2006 which was headed with the Tribunal reference LCA/67/2006 and which stated as follows:

“I refer to my letter dated 31 October last.

I understand from Mr Hamilton of the council’s Design and Property Services that compensation in this matter has now been agreed. Under the circumstances, I should be grateful if you could confirm that you have no objection to this matter being withdrawn from the Lands Tribunal.”

10. By a letter dated 9 November 2006 the Legal Services Department of the Compensating Authority wrote to the Claimant and his wife Mrs Scholes stating:

“I understand from the Design and Property Service that terms have been agreed to pay you the sum of £6,000 compensation pursuant to Part I of the Land Compensation Act 1973.

I enclose a Form of Receipt which should be signed by you both where indicated by your pencilled initial ...

If you return the signed Form of Receipt to me, then as soon as I hear from your lender I will be able to process payment”.

There was enclosed therewith a formal notice of receipt describing the parties (who were the Compensating Authority and also Mr and Mrs Scholes) and which then defined the “Scheme” as follows:

“Grange Road/Challenge Way, Batley, West Yorkshire Road Improvement Scheme and Mill Forest Way, Batley, West Yorkshire – Road Development Scheme”

The operative part of the document then provided:

“**WE** the Claimant of the Property **HEREBY ACKNOWLEDGE** to have received from Council the sum of **SIX THOUSAND POUNDS (£6,000.00)** together with interest thereon in full and final settlement of our claim to which we are entitled as owners of the Property in relation to the Scheme under Part I of the Land Compensation Act 1973”.

11. By a letter dated 14 November 2006 the Legal Services Department of the Compensating Authority wrote again to the Claimant and Mrs Scholes confirming the amount of interest which would be payable on the compensation claim and showing how the claim and the interest had been calculated. There was then set out a table with two entries in it, there being a sum for compensation payable and interest payable and a total in respect of each of the two entries in the table. These two entries were:

- Challenge Way/Grange Road, Batley
- Mill Forest Way, Batley

12. By a letter dated 17 November 2006 the Claimant wrote to the Compensating Authority stating:

“Thank you for your letter of 14 November 2006.

I agree to the figure of £7657.99 to settle my claim.

I will send you receipt when I received final payment, hopefully within the next two weeks.”

13. By letter dated 27 November 2006 to the Claimant and Mrs Scholes the Compensating Authority sent a cheque for £7665.53 stating

“Accordingly, I now enclose herewith a cheque in the sum of £7665.53 in respect of the compensation, together with interest which has been calculated as per the attached interest calculation form. Please kindly acknowledge safe receipt by signing and returning the form of receipt forwarded to yourselves on the 9th November.”

14. The Claimant cashed the cheque without any objection to the basis upon which it had been tendered. However the Claimant did not send back the signed form of receipt. In due course, with a hearing before the Lands Tribunal scheduled for 30 March 2007, the

Compensating Authority wrote to the Claimant on 6 February 2007 pointing out that the receipt had not been received and suggesting that it would be a complete waste of everyone's time to attend a Lands Tribunal hearing on 30 March and asking for confirmation that the Claimant would have no objection to the matter being withdrawn from the Lands Tribunal. The letter asked for acknowledgment of receipt of the cheque sent in November.

15. By a letter dated 1 March 2007 the Claimant wrote objecting to the manner in which he had been treated by the Compensating Authority and contending that the money he had received did not reflect a realistic settlement. He stated:

“If you are unable to make a better offer, I will provide you with the necessary documentation to proceed with the Lands Tribunal on 30 March 2007.”

16. By letter dated 8 March 2007 the Compensating Authority replied, noting surprise, to the Claimant pointing out that the cheque had been sent by way of settlement and had been cashed and that there was case law indicating that if a cheque is sent in settlement and the recipient does not wish to settle on that basis, he should first inform the sender before cashing the cheque.

17. It appears that the hearing for 30 March 2007 was in due course cancelled. I have not been provided with any further documentation (beyond the Compensating Authority's letter of 8 March 2007 to the Tribunal) as to how it came about that this hearing was cancelled and whether there was some formal withdrawal or abandonment of the reference. The Compensating Authority has not sought to rely upon such material in support of its argument that the present claims have been compromised. Instead the Compensating Authority relies upon the facts as recorded above that a cheque was sent by way of settlement and was cashed without demur and that therefore the Claimant's claims have been compromised.

The parties' contentions

18. The Compensating Authority in its further statement of case dated 9 October 2008 submits that in October 2006 compensation was agreed with the Claimant broken down as follows:-

(1)	Challenge Way/Grange Road	£3,000
	Surveyor's fees on above	£175
(2)	Mill Forest Way	£2,605
	County Court fee plus expenses	£220
(3)	Fort Ann Road alterations	<u>Nil</u>
		<u>£6,000</u>

In paragraph 6 of its further statement of case the Compensating Authority stated

“It should be noted that the council offered and Mr and Mrs Scholes accepted compensation in respect of the works carried out for the Challenge Way/Grange Road and Mill Forest Way schemes. It has always been the view of the council that the Fort Ann Road alterations did not cause any diminution in value to 123 Fort Ann Road and therefore no compensation would be payable.”

19. The Compensating Authority has not submitted any evidence by way of witness statement or documentation to support the assertion that there was any agreement that the compensation payable in respect of the Fort Ann Road alterations should be quantified as £nil.

20. The Claimant in his letter of 21 July 2008 in relation to the preliminary issue has stated

“one of my claims was dismissed out of hand by Mr Hamilton and has still not been settled.”

In his further letter of 2 October 2008 the Claimant stated that he was, in this passage of his letter of 21 July 2008, referring to his claim in respect of the extension of Fort Ann Road (including the construction of a turning area). The Claimant denies that he has ever agreed to accept £nil as compensation in respect of the extension of Fort Ann Road (including the construction of a turning area).

Decision

21. I accept both upon general principles and upon the authority of *Bell v Galynski and Kings Loft Extension Limited* [1974] 2 Lloyd’s Rep 13 that if there exists a dispute between A and B and if A submits a cheque for a certain sum to B proposing a settlement in that sum upon a certain basis and if B, without any demur or qualification, accepts the cheque and pays it into his account, then B will be held to have entered into a contract of compromise on the terms offered by A. The question however in the present case is what were the terms offered by the Compensating Authority. There appear to be two possibilities:

- (1) That the Compensating Authority was offering the relevant sum to settle the entirety of the claims which were the subject of the reference to the Lands Tribunal under reference LCA/67/2006;
- (2) That the Compensating Authority was offering the relevant sum to settle the claims referred to in the notice of receipt document and in its letter of 14 November 2006.

22. The Compensating Authority’s letter of 2 November 2006 suggests the intention was to settle the entirety of the claim. However the later, and more formal, documents, including in particular the formal proposed notice of receipt, expressly make reference to the Claimant’s claim for compensation in respect of the Grange Road/Challenge Way Scheme and the Mill

Forest Way Scheme but make no reference to the Claimant's third claim, namely in respect of the extension of Fort Ann Road (including the construction of a turning area). In assessing the basis on which the Compensating Authority made its offer of settlement I conclude that the matter should be decided by reference to these formal and express documents. Nowhere in these documents does the Compensating Authority attribute £nil to the extension of the Fort Ann Road claim nor does the Compensating Authority indicate that the sum is being offered in settlement of all three heads of claim, including the extension of Fort Ann Road.

23. It is unclear to me as to why, if the Claimant wished to continue to pursue his claim for compensation in respect of the extension of Fort Ann Road (including the construction of a turning area) he did not require the 2006 reference to continue to a hearing. However, I have not been provided with the documentation regarding this. Also the preliminary issue with which I am concerned is an alleged contract of compromise going to the jurisdiction of the Lands Tribunal. There is not before me an argument to the effect that, even if the Tribunal does have jurisdiction to consider this claim for compensation in respect of the extension of Fort Ann Road, the Tribunal should decline to do so on the basis that to pursue this claim in this fresh 2008 reference (as opposed to pursuing it in the 2006 reference) is an abuse of the process of the Tribunal. This observation is not to be taken as any expression of view as to what might be the merits of any such argument if it were raised.

24. In the result I conclude that the parties have entered into a contract of compromise in respect of the Claimant's claim for compensation under headings (1) and (2) in paragraph 3 above, but that they have not compromised the claim for compensation referred to in heading (3) of that paragraph. Accordingly the Tribunal has no jurisdiction to consider claims (1) or (2), but it does have jurisdiction to consider claim (3) because this has not been compromised.

25. The parties are now invited to make, within 28 days, their respective proposals (which should if possible be agreed proposals) as to the future procedural steps to be taken in this reference and the timetable for those steps, including the service of expert evidence (if any).

Dated 20 January 2009

His Honour Judge Huskinson