

Appeal No. VA01/1/004

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**Devil's Glen Equestrian Centre Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Equestrian Centre at Lot No: 1JaK/2 Ballymaghroe, Ballycullen, County Wicklow

**B E F O R E**

**Fred Devlin - FSCS.FRICS**

**Deputy Chairman**

**Finian Brannigan - Solicitor**

**Member**

**Tim Cotter - Valuer**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 21ST DAY OF FEBRUARY, 2002**

By Notice of Appeal dated the 5th day of April 2001, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €2.53 (£65) on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that: -

"1. No services whatsoever which would warrant the payment of rates are provided by the Local Authority. The roads, refuse disposal are all provided by Devil's Glen Equestrian Centre Limited with no contribution from the Local Authority.

2. Such further grounds as may be adduced during the course of the Appeal which appear appropriate."

This matter came on for hearing before the Valuation Tribunal on the 11th July 2001 for the determination of the issue as to whether the appellant was estopped from proceeding further with the appeal on the grounds that the valuation had been agreed by Frank O'Donnell and Company who were instructed by the appellant at first appeal.

Mr. Brian Kennedy B. L. instructed by Messrs Miley and Miley, Solicitors appeared on behalf of the appellant and Mr. Donal O'hUallachain, Staff Valuer from the Valuation Office appeared on behalf of the respondent.

### **The Case for the Appellant**

Mr. Kennedy on behalf of the appellant stated that no actual authority was given by Mr. Stephen Miley on behalf of Devil's Glen Equestrian Centre to negotiate a binding agreement. Mr. Kennedy stated further that no ostensible or apparent authority had been given to Mr. Frank O'Donnell and if any ambiguity arose, it was fairer to allow the appellant to prosecute the appeal. He said that it was never intended that Mr. O'Donnell should have authority to conclude an agreement and that in order for any estoppel to arise there must be detrimental reliance arising for the party attempting to arise the estoppel, and that there was no detrimental reliance. Counsel for the appellant referred to the case of Kett v. Shannon 1987 ILRM and further referred to Courtney on the Law of Private Companies at Page 195. Counsel stated that detrimental reliance was absent in this case and that the Kett and Shannon case stated that this was necessary. Mr. Kennedy further stated that there was no injury to the Commissioner's position and that therefore, there was no detrimental reliance. Counsel said that where there was ambiguity as a matter of public policy, it was better to give the benefit of the doubt to the appellant and that it was better also to save expense by going back to the start of this process rather than issuing proceedings elsewhere.

Mr. Kennedy urged on behalf of the appellant that the agreement reached between Mr. Frank O'Donnell and the Commissioner of Valuation whereby there was a reduction in valuation of the subject premises from £85.00 to £65.00 be regarded as void on the

grounds that Mr. O'Donnell had no authority, whether actual or ostensible, to bind Mr. Miley on behalf of Devil's Glen Equestrian Centre Limited.

### **The Case for the Respondent**

Mr. Donal O'hUallachain Staff Valuer with the Valuation Office stated that where an agreement is concluded at first appeal, it is not considered binding on either party until a letter is received from the agent committing the principal to the terms of the agreement and the Commissioner issues his decision in accordance with those terms. He stated that the appellant's consent may be withdrawn prior to the determination of the Commissioner's decision and this would terminate the provisional agreement. He stated that in this case there was no withdrawal of the appellant's consent and that a letter of agreement to the reduction of the valuation from £85.00 to £65.00 in respect of the subject premises was received from Frank O'Donnell & Co. dated 12<sup>th</sup> February 2001 and that the Commissioner decided the Appeal in accordance with the terms of the Agreement one month later on the 12<sup>th</sup> March 2001. It was further submitted by Mr. O'hUallachain that in the interim there was no indication to the Valuation Office either by the appellant or by the agent that the appellant had any reservations about the agreement.

He further stated that when an experienced and competent valuer acts as agent for an appellant and explicitly enters into an agreement in writing on behalf of his principal, the Commissioner does not question his authority to do so. The Commissioner would not be aware of any limit to the agent's authority and acts on the belief that the agent has the authority, which he purports to exercise. In this case, he submitted, both of the conditions for binding agreement were fulfilled and the Commissioner considered both himself and the appellant to be bound by the agreement, the terms of which were set out in a letter sent to the Valuation Office by Mr. Frank O'Donnell on the 12<sup>th</sup> of February 2001.

**Evidence of Mr. Stephen Miley on behalf of the Appellant**

Mr. Stephen Miley took the Oath and gave evidence that he was a Director and Secretary of Devil's Glen Equestrian Centre Limited. He said that he received notification of rateable valuation of £85.00 in December 1999 from Wicklow County Council. Shortly thereafter he also received a letter from Frank O'Donnell among others with regard to valuation services. He said that Mr. O'Donnell was in the same hunt as he was and therefore was known to him. He said that he received a brochure from Mr. O'Donnell on the 10<sup>th</sup> May 1999 after which he wrote to Mr. O'Donnell on the 18<sup>th</sup> May 1999 asking him to act for him in the appeal. He said that he sent Mr. O'Donnell the letter and enclosed a copy of the revision notice. He said that he received a letter from Mr. O'Donnell on the 2<sup>nd</sup> June 1999 and he sent one to him on the same date. He said that Mr. O'Donnell wrote to him to say that they had to wait for the appeal valuer to be appointed sometime within the next six months and that he, Mr O'Donnell would negotiate on his behalf. He said that he understood that Mr O'Donnell was going into the negotiation stage and that in his letter to Frank O'Donnell he said "I note however that you would pursue the appeal" and he enclosed a cheque. He said that he next received the letter from Mr O'Donnell on the 15<sup>th</sup> January 2001 and that he responded on the 18<sup>th</sup> of that month and gave him the information which he required in the letter of the 15<sup>th</sup> January 2001 and asked that Mr O'Donnell keep him informed. He said that he felt that they were still at the preliminary stage and that when he got a letter on the 21<sup>st</sup> February 2001 telling him of the agreement which had been reached with the Valuation Office to reduce the rateable valuation from £85.00 to £65.00 he thought that the deal was done and that he could not do anything about it. He said however that he felt that although it was the end of the process, that it was not the end of the matter and that it could be further appealed. Mr. Miley said that he was not familiar with the procedures but he felt that it was unusual that Mr O'Donnell as an expert valuer had gone off and settled the Case without authority. Mr. Miley said that in the course of the letter of the 21<sup>st</sup> February 2001, Mr O'Donnell told Mr. Miley that if he had any queries he should not hesitate to contact him and that the agreement was subject to the approval of the Commissioner.

Mr. Miley although disappointed conceded that he did not write to Mr O'Donnell and he did not contact the Valuation Office directly although he disagreed with the terms of the agreement. The witness stated that he got a letter from Wicklow County Council on the 2<sup>nd</sup> April 2001 telling him of the valuation and advising him of his right of appeal. He said that he believed that the Commissioner would not have proceeded with consent to the agreement if he believed that Mr O'Donnell did not have the authority to make an agreement on his behalf. He further stated that he did not contact the Valuation Office directly as he had retained Mr O'Donnell to act for him and that in circumstances where you retain someone you do not usurp their authority. He conceded that he did pay Mr O'Donnell's fee, albeit reluctantly, by way of a cheque attached to a letter expressing his disappointment.

**Findings:**

Taking into consideration the submissions of Mr. Kennedy on behalf of the appellant, the submissions of Mr. O'hUallachain on behalf of the respondent and Mr. Miley's oral evidence given on the 11<sup>th</sup> July 2001, it appears that the facts are as follows:

In May of 1999, Mr. Miley on behalf of the Appellant Company instructed Mr. Frank O'Donnell, an experienced and competent valuer to act on his behalf in the appeal against the decision of the Commissioner of Valuation to set the rateable valuation of the Devil's Glen Equestrian Centre Ltd. at £85.00. Following this he received a letter seeking information from Mr. O'Donnell on the 15<sup>th</sup> January 2001 and he replied on the 18<sup>th</sup> January 2001 and requested that Mr. O'Donnell keep him informed. Subsequent to this, Mr. O'Donnell reached an agreement with Mr. P. Colgan of the Valuation Office whereby the Valuation would be reduced from £85.00 to £65.00 subject to the approval of the Commissioner of Valuation and that he communicated the terms of the agreement to Mr. Miley on behalf of the Appellant Company by way of letter dated 21<sup>st</sup> February 2001 and that Mr. O'Donnell further invited Mr. Miley to contact him if he had any queries and made it clear that the agreement was subject to the approval of the Commissioner. Subsequent to this, Mr. Miley did not write to Mr. O'Donnell indicating his disagreement or unhappiness with the terms of the settlement. On the 12<sup>th</sup> March

2001 the Commissioner of Valuation decided the appeal in accordance with the terms of the agreement and no indication of disagreement with the terms of the settlement was indicated until the letter from the appellant of the 5<sup>th</sup> April 2001.

Mr. Kennedy on behalf of the appellant urged that the Tribunal consider the cases of **Armagas Limited -v- Mundogas SA [1985] 3 ALL E.R.**, the case of **Kett -v- Shannon**, a Supreme Court Judgement reported at **[1987] I.L.R.M.**, together with an extract from page 195 of the Law of Private Companies, by Thomas B. Courtney B.A. L.L.B. Solicitor. Mr. O'hUallachain urged consideration of the Tribunal Cases of **Horgan Meats VA88/0/266**, **Kitty's Stores Ltd. VA93/1/003**, **Lucy O'Connor VA90/3/29**, **Northern Sound VA92/6/49**, **Frank Glynn VA90/3/002** and **Master Credit Limited VA88/373**.

### **Determination**

Having considered all of the above, it would appear that the law as it applies in this Jurisdiction is set out by Mr. Justice Henchy in the case of **Kett -v- Shannon**, a Supreme Court Judgement where Henchy J. (Griffin and Hederman JJ concurring) delivered his judgement on the 21<sup>st</sup> March 1986 and in the course of which he stated that actual authority exists when it is based on an actual agreement between the principal and the agent. In this case before the Tribunal it appears that Mr. Miley disputes that Mr. O'Donnell had his actual authority. However on the facts outlined by Mr. Miley himself, Mr. O'Donnell would not have been unreasonable in believing that he had actual authority to negotiate the settlement as agent on behalf of Mr. Miley and further, that the agreement reached by him on a provisional basis on the 12<sup>th</sup> February 2001 was acceptable to Mr. Miley as the latter did not take up Mr. O'Donnell's invitation to query the provisional agreement or to express dissatisfaction with it in the two to three weeks leading up to the Commissioner's decision on the 12<sup>th</sup> March 2001. Mr. Miley further accepted that he did not express any dissatisfaction until after he received the notification from Wicklow County Council confirming the rateable valuation of £65.00 on foot of the agreement, in the first week of April 2001. Mr. Miley, however, states in his evidence

that he did not give actual authority to Frank O'Donnell to negotiate a settlement on his behalf and no sworn evidence was given at the oral hearing to contradict this statement.

The second question that arises is whether Mr. O'Donnell had ostensible authority to conclude an agreement on behalf of Mr. Miley. It is clear from the *Kett -v- Shannon* decision that ostensible authority derives not from any consensual arrangement made between the principal and the agent but is founded on a representation made by the principal to the third party which is intended to convey, and does convey, to the third party that the arrangement entered into under the apparent authority of the agent will be binding on the principal. Mr. Henchy J. referred with approval to the judgement of Robert Goff L.J. in ***Armagas Limited -v- Mundogas SA* [1985] 3 ALL E.R. at 1795** wherein he says with reference to the judgement of Diplock L.J. in ***Freeman and Lockyer -v- Buckhurst Park Properties (Mangal) Limited* [1964] 2 Q.B at Page 480**; "It appears, from that Judgement that ostensible authority is created by a representation by the principal to a third party that the agent has the relevant authority, and that the representation, when acted on by the third party, operates as an estoppel, precluding the principal from asserting that he is not bound. The representation which creates ostensible authority may take a variety of forms, but the most common is a representation by conduct, by permitting the agent to act in some way in the conduct of the principal's business with other persons, and thereby representing that the agent has the authority which an agent so acting in the conduct of his principal's business usually has."

The question before the Tribunal is firstly whether Mr. O'Donnell was an agent with actual authority to conclude an agreement on behalf of Mr. Miley. Mr. Miley accepts that he instructed Mr. O'Donnell in May 1999 to negotiate on his behalf with the Valuation Office and no indication is given that any other party was purporting to negotiate on behalf of the appellant with the respondent from this time onwards up until the decision of the Commissioner on first appeal made on the 12<sup>th</sup> March 2001. Although Mr. O'Donnell was instructed to act on behalf of Mr. Miley as Secretary and Director of the Appellant Company in the matter of the first appeal, Mr. Miley is adamant that he did not give actual authority to Mr. O'Donnell to conclude any agreement without reference to

him, and in the absence of any evidence to the contrary the Tribunal must accept Mr. Miley's evidence in this regard.

The question then arises as to whether Mr. O'Donnell had ostensible authority to conclude an agreement on behalf of Mr. Miley. It is clear that the respondent believed that Mr. O'Donnell had authority to bind Mr. Miley but this is not sufficient of itself. There must have been a representation by Mr. Miley to the Commissioner of Valuation to the effect that Mr. O'Donnell had the relevant authority and that the representation when acted on by the Commissioner would operate as an estoppel precluding Mr. Miley from asserting that he was not bound by an agreement reached on his behalf by Mr. O'Donnell. The question is whether Mr. Miley permitted Mr. O'Donnell to act in some way in the conduct of his business with the Commissioner of Valuation, thereby representing that Mr. O'Donnell had the authority which an agent so acting in the conduct of his principal's business usually has.

**The following is clear from the evidence:-**

- Mr. O'Donnell is accepted by both parties to be an experienced and competent valuer who acts as agent for appellants and in the course of his business negotiates and concludes agreements with the Commissioner of Valuation in relation to appeals against decisions in regard to rateable valuations.
- Mr. Miley, an experienced Solicitor, instructed Mr. O'Donnell to act on his behalf in pursuing an Appeal and that subsequent to this in June of 1999 Mr. O'Donnell stated he would be negotiating on behalf of Mr. Miley.
- Following queries raised by Mr. O'Donnell in January 2001, which were dealt with by Mr. Miley within three days, Mr. O'Donnell negotiated a provisional agreement with Mr. Colgan on behalf of the Commissioner of Valuation on the 12<sup>th</sup> February 2001, and informed Mr. Miley of this fact by letter of the 21<sup>st</sup> of February 2001 and pointed out that the agreement was **provisional** and subject to the approval of the Commissioner and further invited Mr. Miley to submit to him any queries he wished to raise.



- Mr. Miley did not reply to this letter or raise any queries and subsequently on the 12<sup>th</sup> March 2001, the Commissioner approved the provisional agreement and issued his decision in accordance with the terms agreed between Mr. O'Donnell and Mr. Colgan on behalf of the Commissioner. Following notification to Mr. Miley, by Wicklow County Council on the 2<sup>nd</sup> April 2001 that the valuation has been set at £65, Mr. Miley on behalf of the Appellant Company indicated his wish to appeal the decision.

Mr. Kennedy B. L. on behalf of the appellant stated that in his view in order for an estoppel to arise, there had to be detrimental reliance on the part of the party attempting to arise the estoppel and that there was no detrimental reliance in this case. Mr. O'hUallachain on behalf of the Respondent stated that there was detrimental reliance and that the appellant was now trying to bring the Appeal again which would cause additional expense for the Commissioner. The judgement of Mr. Justice Henchy in the Kett -v- Shannon decision does not cite detrimental reliance as being a factor in determining whether ostensible authority operated as an estoppel against the appellant's attempt to assert he was not bound by the agent's agreement.

It is clear from the evidence, that Mr. O'Donnell was the sole agent acting on behalf of Mr. Miley and the Appellant Company from May 1999 up until the decision of the Commissioner on first Appeal made on the 12<sup>th</sup> of March 2001. There is no suggestion that any other party acted on behalf of the appellant or that Mr. Miley himself interfered. Indeed, Mr. Miley stated that he would not contact the Valuation Office directly as this would be a usurpation of his agent's authority, although he says this authority fell short of a right to conclude an agreement on behalf of the Appellant. Mr. Miley's conduct in allowing Mr. O'Donnell to negotiate on his behalf and subsequently the fact that he did not dispute the terms of the provisional agreement reached between Mr. O'Donnell and Mr. Colgan of the Valuation Office, between the 21<sup>st</sup> February 2001 and the date of the Commissioner's decision on the 12<sup>th</sup> March 2001 amounted to a representation by conduct to the third party, in this case the Commissioner of Valuation, that his agent Mr. O'Donnell had the relevant

authority to conclude an agreement on his behalf. The Tribunal holds, therefore, that there was a representation by conduct on the part of the appellant to the Third Party, in this case the respondent, that Mr. O'Donnell had authority to conclude a binding agreement.

Having considered all the evidence and legal submission the Tribunal is of the view that the agreement made between Mr. O'Donnell and Mr. Colgan of the Valuation Office is binding not only on them but on their respective principals. In the circumstances the Tribunal holds that the appellant is estopped from making an appeal before this Tribunal and this Tribunal has no jurisdiction to deal with the matter. Accordingly therefore the appeal is dismissed.