

Appeal No. VA02/1/034

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**Cork City Council**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

**and**

**McDonalds Restaurants of Ireland Ltd.**

**NOTICE PARTY**

RE: Restaurant / Cafe, Map Reference: Blackpool Shop Centre, Unit 33, Dublin Street, County Borough of Cork **PRELIMINARY ISSUE:** Whether appeal out of time under provisions of S 3(5) (a) Valuation Act 1988.

**B E F O R E**

**John O'Donnell - Senior Counsel**

**Chairperson**

**John Kerr - BBS.FIAVI. ASCS.**

**Member**

**Joseph Murray - Barrister**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 22ND DAY OF MARCH, 2004**

By Notice of Appeal dated the 10th January 2002, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €00.00 on the relevant property above described.

The Grounds of Appeal as set out in the said Notice of Appeal are:

"I wish to appeal against the decision to strike out the R.V. on McDonalds Restaurant at 33, Dublin Street, Cork on the basis that the Owner/Occupier was notified in compliance with Section 3 (4) (a) and (b) of the Valuation Act 1988."

**THE PRELIMINARY ISSUE**

By agreement the Tribunal dealt as a preliminary issue with the following question:

"Having regard to the provisions of Section 3(5)(a) of the Valuation Act 1988, is the appeal in question out of time and therefore incapable of being heard by the Tribunal, there being no provision within the legislation for the extension of time within which to appeal?"

The preliminary issue was heard in the Tribunal Offices, Ormond House, Ormond Quay Upper, Dublin 7 on the 9<sup>th</sup> February 2004.

At the hearing the appellant was represented by Mr. Brian Kennedy BL, instructed by Ms. Valerie Reardon Senior Executive Solicitor for Cork City Council. The Notice Party was represented by Mr. Owen Hickey BL, instructed by Ms. Mary Farrelly of McCann Fitzgerald Solicitors.

The respondent was represented by Mr. Brendan Conway BL, instructed by the Chief State Solicitor's Office.

### **INTRODUCTION**

Section 3(5)(a) of the Valuation Act, 1988 (which Act was in force at the material time) provides as follows:

*“An owner or occupier of property or the rating authority in whose area the property is situated may, by notice in writing sent by post or given by or on behalf of the appellant, appeal to the Tribunal against the determination made by the Commissioner under Section 20 of the Act of 1852 within 28 days after the publication of the list of determinations.”*

The Commissioner of Valuation made various decisions on appeals in relation to valuation in 2001. One such decision related to the obligation of the Notice Party (“McDonalds”) to pay rates to the Appellant, Cork City Council (“the Council”). The Valuation Office wrote to the Council on the 26th November 2001 indicating the decisions in question would be issued to the Council on or before the 11<sup>th</sup> December 2001. This letter referred to the requirement of giving public notice within three days of receipt of the decisions in question. The letter indicates that the Council should make immediate arrangements for inserting the relevant notice in the newspaper circulating in its area during the period 11<sup>th</sup> December to 13<sup>th</sup> December 2001 inclusive.

The letter also suggests various points which might be incorporated into such a notice being inserted in the relevant newspaper. Point 3 of the points suggested for inclusion reads:

*“An owner or occupier of a property included in the List may appeal to the Tribunal by notice in writing. Such notice must reach the Registrar not later than 11<sup>th</sup> January, 2002.”*

The Council did indeed appeal the decision of the Commissioner in relation to McDonalds. The Notice of Appeal is signed on behalf of the Council by Kathleen Lynch and is dated the 10<sup>th</sup> January 2002. Immediately under that signature and on the Notice of Appeal the following words appear:

*“Please note that appeals should be sent to the Tribunal at the address below within 28 days after publication of first appeal decisions.”*

The address of the Registrar of the Valuation Tribunal is then given. The Commissioner of Valuation and the Council were represented as was the Notice Party by Solicitors and Counsel at a preliminary hearing in relation to this matter. The Tribunal received written and oral submissions from Counsel and was greatly assisted by same.

### **THE FACTS**

The facts are not in dispute. In essence these facts are:

- (i) The appeal decisions were received on the 11<sup>th</sup> December 2001.
- (ii) The publication of the list of these appeals decisions took place on the 12<sup>th</sup> December 2001.
- (iii) The date of the Council’s Notice of Appeal is the 10<sup>th</sup> January 2002.

- (iv) The date on which the note in respect of the said appeal was received by the Valuation Tribunal is the 11<sup>th</sup> January 2002.

### **THE PRELIMINARY ISSUE**

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### **THE NOTICE PARTY**

It was agreed by all parties that the Notice Party had a legitimate interest in attending and making submissions. Counsel for the Notice Party argued that the terms of the Section in question are clear. Since more than 28 days had expired since the publication of the list before the notice of appeal was sent to (or received by) the Valuation Tribunal, the appeal in question is out of time and the Tribunal has no jurisdiction to deal with same. By way of legal submissions on behalf of the Notice Party we were referred to the section of the Valuation Act, 1988. We were also referred to **Ganley v Minister for Agriculture (1950) I.R. 191**. In the course of his judgment in this short case Kingsmill Moore J, made it clear that a statutory time limit is not capable of being extended by the High Court even if the period is extremely short and may by its shortness create difficulties for the affected parties. We were also referred to **Freeney –v- Bray Urban District Council [1982] ILRM 29** which confirmed the application of the provision of Section 11 of the Interpretation Act, 1937. Section 11, sub-section (h) of that section headed “**Periods of Time**” reads:

*“Where a period of time is expressed to begin on, or be reckoned from, a particular day, that day shall, unless the contrary intention appears, be deemed to be included in such period, and, where a period of time is expressed to end on or be reckoned to a particular day, that day shall, unless the contrary intention appears, be deemed to be included in such period.”*

We were also referred to VA96/4/039 **University College Cork –v- Commissioner of Valuation**. This appeal related to the time provided to a party dissatisfied with a determination of the Valuation Tribunal to require the Tribunal to state and sign a case for the opinion of the High Court. In that case reference was made to **Irish Refining plc –v- Commissioner of Valuation [1990] I.R. 568** which held that the three month period within which a party might request a Judge to state and sign a case for the opinion of the High Court was mandatory, but that the 21 days which the Judge had to state such a case in writing, sign it and transmit it to the Commissioner of Valuation was directory only, and not mandatory. In the **State (Multiprint Label Systems) –v- The Honourable Judge Neylon [1984] ILRM, at page 545** the High Court was asked to interpret a provision of the Tax Acts which required “*immediately after the determination of an appeal by the Appeal Commissioners, the Appellant or the Inspector, if dissatisfied with the determination as being erroneous in point of law, may declare his dissatisfaction to the Commissioners who heard the Appeal.*” In that case Finlay P held that the requirement of expressing dissatisfaction “*immediately*” should not be construed so strictly as to involve an expression of dissatisfaction at the conclusion of the actual hearing; alternatively, the requirement should be construed as directory and not mandatory. It was submitted however that when the statute lays out a particular specific timescale (being in this case a period of 28 days from publication), such a timescale can only be regarded as a mandatory as opposed to a directory provision. It was argued on behalf of the Notice Party that such a provision does not allow for the same sort of discretion in interpretation which might arise from the use of a word such as “immediately”, “forthwith” and so on.

Finally we were referred to **Benyon on Statutory Interpretation (3<sup>rd</sup> Edition)** which refers to time obligations and the strict construction of statutory provisions which interfere with the property of a person.

### **CORK CITY COUNCIL**

For the Council it was argued that the letter of the 26<sup>th</sup> November 2001 from the Valuation Office constitutes in effect a waiver by the Valuation Office of the period of

limitation applicable under the Act. In the alternative it was contended that this letter estopped the Valuation Office from relying on the time limit provided in Section 3(5)(a) of the 1988 Act. It was contended that the advice given in the letter to the effect that the notice in writing must reach the Registrar not later than the 11<sup>th</sup> January 2002 was an unequivocal assurance, which assurance was relied on by the Council. In **Ryan –v- Connolly [2001] 1 I.R. 627** the Supreme Court had to consider whether “without prejudice” proposals for settlement meetings constituted a clear and unambiguous representation giving rise to an estoppel which would have prevented the Defendants to a road traffic accident pleading the Statute of Limitations as a defence to a claim. It was suggested that the representation in the letter of 26 November 2001 was a clear and unambiguous representation as to the appropriate time limit and was therefore of a different order to the request for a settlement meeting in **Ryan –v- Connolly**. We were also referred to a decision of the Lands Tribunal in England in **Cooperative Wholesale Society –v- Chester-Le-Street District Council [1996] RVR 185**. This established that Section 10(3) of the Compulsory Purchase (Vesting Declarations) Act, 1981 which established a six year limitation period for compensation claims was capable of being waived either by agreement of the parties or otherwise in consequence of an estoppel.

We were also referred to **Kammins Ballrooms Co. Limited –v- Zenith Investments (Torquay) Limited [1971] A.C. 850**. In that case the House of Lords held that the requirements of Section 29(3) of the Landlord and Tenant Act, 1954 were procedural rather than jurisdictional. A tenant had filed an application for a new tenancy prematurely. Notwithstanding this, the Landlords were deemed to have a right to ignore or object to the premature application but not to be able to waive it. It was submitted in the instant case that the time limits set out in the relevant section should be regarded as being a procedural limitation rather than one going to jurisdiction.

### **THE COMMISSIONER OF VALUATION**

The Commissioner of Valuation also made submissions. He pointed to Section 21 of the Valuation (Ireland) Act, 1852. This required the Commissioner of Valuation to make out and sign in the form in the schedule annexed to the Act a statement of all cases in which he shall have altered or refused to alter the valuation in the area in question. The Section

further required the Commissioner of Valuation to transmit such a list so signed to the Clerk of the Board of Guardians of the Union in which such tenements are situate, who shall within three days after the receipt of said lists, make the same public, by notices. Counsel submitted that this in effect conferred a three day publication period to the relevant rating authority. In effect this contention meant that the words “*within 28 days after the publication of the list of determinations*” set out in Section 3(5)(a) of the Valuation Act, 1988 should read instead “*within 28 days after the three day period allowed for publication of the list of determinations*”.

Counsel for the Commissioner of Valuation argued that if the time were to be construed on this basis the notice of appeal in question would be within time. We were also referred to Decision **VA00/3/033 Dublin Corporation –v- The Commissioner of Valuation and FISC (Ireland) Limited (Notice Party)**. This decision concerned the discretion of the Tribunal to permit an amendment of the notice of appeal of the Appellant. The Tribunal in that case determined that it had power in the interest of justice to allow an amendment to the grounds of appeal as sought.

### **DETERMINATION**

Having considered the submissions, the documentation provided to us and the various cases opened by Counsel, the Tribunal has determined that the appeal in question is out of time and cannot be heard by the Tribunal. In reaching this conclusion the Tribunal has had regard to the following matters:

(i) **Estoppel/waiver:**

It is a moot point whether the letter of the 26<sup>th</sup> November 2001 from the Valuation Office to the Council operated as a waiver by the Valuation Office of the period set out in the section or estopped the Valuation Office from relying on the time limit set out in the Section. What is abundantly clear is that in making such a representation the Valuation Office could not be said to be an agent for or representative of the Notice Party, McDonalds. McDonalds did not authorise the writing or sending of this letter, and do not appear to have been aware of its contents until well after it was sent. Therefore any such representation could not

possibly bind the Notice Party, McDonalds. It is thus abundantly clear that the Valuation Office could not waive McDonalds' right to rely on the time limit set out in Section 3(5)(a). Nor could a representation by the Valuation Office act to estop McDonalds from relying on the time limit in question. The cases referred to by Counsel in relation to estoppel or waiver were cases which involved only two parties. None of the cases referred to dealt with the position of the effect on an unconnected Third Party of such a waiver or estoppel. It thus seems to us that even if the letter in question did constitute a waiver or an estoppel (and we are not concluding that the letter in question did constitute a representation amounting to a waiver or estoppel) it could not possibly be enforced as such against McDonalds.

(ii) **Section 21 of the 1852 Act:**

However ingenious the argument put forward by Counsel on behalf of the Commissioner of Valuation in relation to this section of the Act, it would seem to us to do violence to the clear wording of the statute if we were to accede to the interpretation contended for by him. Section 3(5)(a) is clear on its face. To import into the word "publication" the phrase "a period of three days permitted for publication" would in our view be an unacceptable strain to place on the word "publication". Had the legislature wished to provide for such a period it could undoubtedly have done so in clear and unambiguous language. We are aware that during submissions it was suggested that the Valuation Office had always counted the 28 day period provided for as only commencing from the end of the third day following receipt of the lists in question, in effect being a three day period of publication. Whether this occurred as a matter of practice is not for us to determine. It seems to us that the wording of the Act is clear on its face. The word "publication" does not, and in our view cannot mean the words "within the three day period permitted for publication".

It is certainly arguable that the twenty-eight day period provided for commences on the day after the date of publication. The use of the words "after the date of publication" in the section could be said to indicate the appropriate "contrary



intention” provided for in section 11(h) of the Interpretation Act referred to above so as to justify the exclusion of the date of publication from computation of the period in question. However it is not necessary for us to decide this issue, since even this interpretation would not avail the Appellant. The 28 days would still have commenced on the 13<sup>th</sup> December and expired on 9<sup>th</sup> January. The Appeal in question would thus still have been out of time.

(iii) **The discretion of the Tribunal:**

We accept that where words such as “immediately”, “forthwith” and other cognate expressions are used an element of discretion in interpretation is conferred on the adjudicating body. It seems to us however that the very strict statutory timetable provided for in the Act means the Tribunal does not have a discretion to extend the time permitted, harsh though this may be. There is no basis for interpreting the time limit as being directory rather than mandatory. Further it is clear (and was agreed by all sides) that there is no provision in the legislation which allows the Valuation Tribunal to extend the time limit in question or indeed to waive it. Indeed the Tribunal as a creature of statute with its jurisdiction confined to what is conferred upon it by statute could be said to be acting in excess of its power and functions were it to take upon itself a right or entitlement to extend a clear and unambiguous time limit of the sort described.

In the circumstances therefore we are of the view that the appeal is out of time having regard to the provisions of Section 3(5)(a) of the Valuation Act, 1988 and therefore the Tribunal has no jurisdiction to entertain the appeal in question.