

Appeal No. VA06/1/006

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

The Construction Workers Health Trust

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. 123-134 (Pt Flr 1 front), Francis Street, Merchants Quay B,
Merchants Quay, County Borough of Dublin

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Maurice Ahern - Valuer

Member

Leonie Reynolds - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 14TH DAY OF JUNE, 2006

By Notice of Appeal dated the 14th day of February, 2006, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €109.00 on the above described relevant property.

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

"The property should have been excluded from the list. On the basis that this is relevant property not rateable under the provisions of Schedule 4, Sections 8 & 16 of the 2001 Act. That it is inequitable to rate this property given the terms of the Valuation Act and based on earlier decisions of the Commissioner and the Tribunal."

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 4th day of April, 2006. At the hearing the appellant was represented by Mr. Owen Hickey, BL, instructed by Messrs. Smyth O'Brien & Hegarty, Solicitors. Mr. Brian Daly, Chief Executive of the Construction Workers Benevolent Fund, gave evidence on behalf of the appellant. Mr. Eamonn Halpin B.Sc.(Surveying), A.S.C.S, M.R.I.C.S, M.I.A.V.I. was also present. The respondent was represented by Mr. Brendan Conway, BL, instructed by the Chief State Solicitor. Ms. Olivia Bellamy, Valuer in the Valuation Office also attended.

The Issue

Whether or not the property in question was rateable having regard to the provisions of the Valuation Act 2001 and the Schedules thereto.

The Property

The property is comprised of a new first floor office suite which consists of a general office, large nurses' training room, which also serves as a boardroom and various individual offices as well as a kitchen/canteen. There is also a medical examination/treatment room of approximately 11.92 sq. metres.

The total area extends to approx. 202.7 sq. metres including the medical examination/treatment room. There are two car spaces.

Location

The property is located on the west side of Francis Street, Dublin 8.

Tenure

The property is held under lease for 9 years and 11 months from 2005 at an annual rent of €46,288.

Written Evidence

Both parties provided written evidence in advance to the Valuation Tribunal.

The Appellant's Case

Mr. Brian Daly gave evidence under oath and stated that he was the Chief Executive of the Construction Workers Health Trust, the appellants herein, and that the company was set up for the administration of health screening for the construction industry to ensure the early diagnosis of illness in workers. Health screening was given freely to workers on building sites. They had a panel of 40 occupational nurses who did contract work. They had a consultation room at their premises for screening of workers from the Liberties area of Dublin and for workers from small building sites. They screened for blood pressure, cholesterol, sugar levels, colon cancer, diabetes etc.

They ran two campaigns:

- (1) For diabetes screening in conjunction with St. James's Hospital under the directorship of Professor John Fitzpatrick and
- (2) Colon cancer in conjunction with Tallaght Hospital under the directorship of Professor Colm O'Morain.

He said that the trust paid for early treatment. If the treatment was long term the Department of Social Welfare took over.

In relation to colon cancer a surgical procedure was needed and the trust paid for this procedure which cost approximately €400. They screened eleven or twelve thousand workers annually but the number was increasing every year. In addition they contributed funds to the Irish Cancer Society, Cystic Fibrosis Research, the Hospice Movement etc.

Health screening was largely preventative and usually resulted in referrals to GPs. If a medical condition was diagnosed then the referral to the GP was paid for by the Trust. Contributors suffering from stress etc. were sent for counselling and the trust paid for four counselling sessions.

There was a training room as well as offices in the premises. This was to enable the fund to brief nurses and to train them in a procedure known as Safe Pass (Health and Safety Awareness Training Programme). They screened 30-40 workers a week in their premises.

Both the Construction Workers Health Trust and the Construction Workers Benevolent Fund used the premises. The Benevolent Fund paid no rent. They were both registered charities with the Revenue Commissioners.

About 60,000 workers each contributed €0.63 per week to fund the Trust in addition to a mandatory pension contribution.

The Benevolent Fund was established 30 years ago. They got funds and distributed them to needy cases. €0.19 a week was contributed to the Benevolent Fund by its members. It had the same trustees as the Health Trust.

About 5% to 6% of Mr. Daly's time was devoted to the Benevolent Fund but, at Christmas, nearly all his time was devoted to the Fund. He would say that he gave one day a month to the Fund.

Under cross examination, Mr. Daly said that the treatment room in the premises was used for arranging screening but that most of the screening took place on various building sites in Ballymun, Dublin Airport, Moneypoint etc. He said that 30 – 40 people a week were screened at the premises.

The Trust had €100,000 worth of machinery stored at Francis Street.

They were trying to create a medical centre in Francis Street. They had a Medical Director, a Dr. Harold Benner, but he did not see patients. He was available to nurses for consultation.

Non-contributors to the Trust were also screened by the Trust and if they needed to see a GP the Trust would also pay their fees. If the worker needed counselling then the Trust would pay for one session only.

The Trust did not fund Tallaght or St. James's Hospital. These hospitals used the Trust for access to a large population for screening. St. James's paid for anything on their side and the Trust paid for anything on their side. Tallaght Hospital adopted broadly the same procedure.

A worker who required screening for colon cancer could take the test kit home and carry out the test over three days.

The Trust took in about €1.7million per annum from its contributors of which €1.1million was spent on screening. It was planned to purchase a mobile screening and treatment unit. The Trust was not in debt.

Mr. Owen Hickey in his legal submission dealt firstly with Paragraph 16 of Schedule 4 of the Valuation Act 2001. He said that the Trust was clearly a charitable organisation pursuant to Section 3 of the Act and that the Deed of Trust of the 20th December 1994, in particular paragraph 6 thereof, set out the main objects of the Trust. He pointed out that in his opinion this Deed of Trust fully met the tests as set out in Section 3 of the 2001 Act which defines “charitable organisation”.

He said that the Tribunal’s decision in **VA04/1/008 - Clones Community Forum Ltd.** (“the **Clones** case”) is to be wholly distinguished from this case. The Memorandum and Articles in the **Clones** case were not consistent with the provisions of Section 3(i)(a) of the Valuation Act 2001. The main objects as set out in the Deed of Trust in this case were. His clients used the property in question exclusively for charitable purposes. He quoted the Supreme Court decision in **Barrington’s Hospital v Commissioner of Valuation [1957] IR 299** in support of his submission.

He maintained that pursuant to Paragraph 16(a) of Schedule 4 it was required, to qualify for exemption from rateability, that the relevant property be occupied by a charitable organisation and that the charitable organisation’s use of the property be exclusively for charitable purposes. In support of his submission he quoted the Supreme Court decision in **Trustees of Kinsale Yacht Club v Commissioner of Valuation [1994] 1 ILRM 45.**

He said that the evidence of the appellant established that they were ratepayers and paramount occupiers of the property and that the Benevolent Fund was merely a permissive and subservient occupier, free of rent. The Benevolent Fund’s activities were manifestly a user of the property for charitable purposes (the **Clones** case).

At the hearing Mr. Hickey handed in a copy of the minutes of a meeting of the Directors of a Company called the Construction Workers Trustees Limited and dated 15th May 2001 as evidence of the change of name of the Construction Employees Health Trust to the Construction Workers Health Trust.

He also quoted from MacNaghten in **Commissioners for Special Purposes of Income Tax v Pemsel [1891] AC 531** wherein he set out four classifications in relation to a definition of “charitable purpose” namely:

- a. The relief of poverty
- b. The advancement of education
- c. The advancement of religion
- d. Other purposes beneficial to the community.

Mr. Hickey maintained that the appellants qualified as a charitable organisation under the fourth classification.

In relation to Paragraph 8 of Schedule 4 of the Act of 2001 he maintained that the subject property was used for early diagnosis, health screening and treatment services and for the administration of these services and that such treatments should be taken in a wholly holistic manner and as such used in accordance with the provisions of Paragraph 8, Schedule 4 of the Valuation Act 2001 and that as such the appellants were a body corporate conforming with Paragraph 8 aforesaid and accordingly the subject property constituted “Relevant property not rateable”.

The Respondent’s Case

Mr. Brendan Conway on behalf of the respondent submitted that he could not agree with the appellant’s contention that they were a charitable organisation as defined in Section 3 of the Valuation Act 2001. The requirements of this section had not been fulfilled in the Deed of Trust of the 20th December 1994. In fact he said he could not see how the Deed of Trust related to the appellants or their case.

The Deed of Trust must be in relation to the appellants and the subject premises. This was not so in this case. The Deed of Trust as furnished had no trustees mentioned therein and referred

to the Construction Employees Health Trust and not to the Construction Workers Health Trust, the appellant herein. He could not see how the copy minutes of the meeting of the Directors of a limited company called the Construction Workers Trustees Limited could change the name of the Construction Employees Health Trust. Only two of the Directors named at the meeting of the Directors of the limited company on the 15th May 2001 were the same as the persons named in the Deed of Trust.

The Deed of Trust as furnished did not refer to the appellant herein and did not state their full name as required by Section 3 of the Act. The persons named in the Deed of Trust were not named therein as Trustees. He maintained that the requirements of Section 3(a)(iii) were not satisfied. There was no statement in the Deed of Trust of a main object or objects or a statement of any secondary object or objects, the purpose of which was the attainment of the main object or objects.

Mr. Conway maintained that the requirements of the definition of “charitable organisation” in Section 3 of the Act of 2001 must be construed literally and strictly and in support of his submissions he relied on the **Clones** case and **VA05/3/072 – Coolock Development Council Ltd**. In both of these cases the Valuation Tribunal took the view that the requirements of Section 3 of the Act of 2001 must be construed literally and strictly.

This dictum must be applied with equal force to the Declaration of Trust for the Construction Employees Health Trust if the Trust Deed was to be read as the Trust Deed relevant to the appellants herein.

In relation to Paragraph 8 of Schedule 4 of the 2001 Act Mr. Conway maintained that this paragraph must be construed in the context in which it appears in the legislation as meaning direct provision of medical care for sick persons in the manner in which such care would be provided in a nursing home or hospital for persons who are clinically ill and therefore such care must be provided by the appellants in the property in order to comply with Paragraph 8 of Schedule 4 of the Act. He maintained that no such proof had been offered either in the evidence adduced or the submissions made by the appellants herein.

Determination

The Tribunal has considered the evidence offered herein and has also considered the written and oral submissions offered by both the appellant and respondent.

The Tribunal finds that the subject relevant property herein is not entitled to exemption from rates pursuant to the provisions of Schedule 4, Paragraphs 8 and 16(a) of the Valuation Act 2001 on the following grounds:

1. There are serious legal difficulties in this appeal. The Deed of Trust of the 2nd December 2001 which the appellant claims relates to the appellant company does not comply with the provisions of Section 3 of the Valuation Act 2001 in relation to the definition of a “charitable organisation” in that
 - i. It does not relate to the appellant company. It relates to a company referred to as “The Construction Employees Health Trust” whereas the appellant herein is the “The Construction Workers Health Trust”. It does not state therein the full name of the appellant body.
 - ii. It does not provide who are to be trustees or who are to be members of its governing board or committee. The persons named in the said Deed of Trust are not designated as trustees in the said Deed of Trust.
 - iii. If the Tribunal is to accept the Deed of Trust furnished herein as the relevant Deed of Trust of the appellant company herein then the requirements of Section 3 (a) (iii) are not satisfied in relation to the definition of a charitable organisation. There is no statement in the relevant Deed of Trust setting out its main object or objects or any secondary object or objects, the purpose of which is the attainment of a main object or objects.
 - iv. At the hearing Mr. Hickey handed in a copy of minutes of a meeting of the Directors of a limited company called the Construction Workers Trustees Limited and dated the 15th day of May, 2001 where it is stated that the persons named therein as directors of the company were trustees of the Construction Employees Health Trust and that they resolved that the name of the Construction Employees Health Trust be changed to the Construction Workers Health Trust. It is not known how this company or its directors became trustees of the Construction Employees Health Trust. Only 2 of the Directors named in the minutes are named in the Deed of

Trust handed in by the appellants. The power of appointment of new trustees is vested in the General Secretary for the time being of the Irish Congress of Trade Unions. No evidence was offered showing that he/she ever exercised this power of appointment. It is noted that Mr. Halpin in his written submission gave the names of the trustees of the Trust as Michael Brennan (Chairman), Eric Fleming, Ben Kearney, James Moore, Patrick O'Shaughnessy and Thomas White. These are not all the same persons as set out in the Declaration of Trust handed in or indeed in the minutes of the meeting held on the 15th May, 2001. No evidence has been adduced showing how they became the trustees of "The Trust". There is no mention of the limited company referred to in the minutes as a trustee of the appellant company.

2. In the Tribunal cases of (a) **VA04/1/008 - Clones Community Forum Ltd.** (b) **VA04/2/013 - County Monaghan Community Network Ltd.** and (c) **VA05/3/072 - Coolock Development Council Ltd.**, the Tribunal took the view that the requirements set out in the definition of "charitable organisations" in Section 3 of the 2001 Act, must be construed in a strict manner. The Tribunal has done so in this case and finds that Section 3 of the Valuation Act, 2001 has not been complied with.
3. Paragraph 8 of Schedule 4 of the 2001 Act set outs clearly that "*Any land, building or part of a building used by a body for the purpose of caring for sick persons, for the treatment of illnesses or a maternity hospital.....*" is relevant property not rateable.

In this case clear evidence was given by Mr. Brian Daly, Chief Executive of the appellant company that the relevant premises is used "for the accommodation of Health Screening for the construction industry."

They have consultation rooms in the premises for screening and these are used to screen 30-40 people a week. The main screening takes place on building sites and for that purpose a panel of 40 occupational nurses are employed on contract. They have a Doctor but he does not see patients, he is merely there for consultation with the nurses, where necessary.

All treatment is carried out by GP's, counsellors, hospitals etc. The company screens workers, members and non-members, for diabetes, colon cancer, prostate cancer, blood pressure, cholesterol, sugar levels etc. and such screening is carried out on the subject voluntarily.

The Tribunal finds that the activities carried out by the appellants are not in accordance with the provisions of Paragraph 8 of Schedule 4 of the 2001 Act in that there is no direct provision of medical care for such persons in the manner in which such care would be provided for in hospitals or nursing homes for persons who are clinically ill. No such care is provided in the subject premises and as such it does not comply with the provisions of Schedule 4 of the Act.

In the appellant's written submission prepared by Mr. Halpin it is clearly stated at the end of page 5 that "Any workers identified by the Health Screening Programme are fast tracked into a treatment programme and the Trust will pay for the initial medical visits and treatment."

The Tribunal finds that the subject property is rateable property within the meaning of the Valuation Act, 2001. The appeal is therefore dismissed.

And the Tribunal so determines.