

Appeal No. VA06/2/035

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

Patrick Lavelle

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Surgery at Lot No. 13Aa, Churchfield, Knock South, Claremorris, County Mayo

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

Joseph Murray - B.L.

Member

Mairéad Hughes - Hotelier

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF NOVEMBER, 2006

By Notice of Appeal dated the 22nd day of May, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €37.00 on the above described relevant property.

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

"Knock Medical Centre is an essential facility of Knock Shrine and was purpose built in the absence of Health Board or other facility in Knock. Knock as an international shrine needs this basic facility for its Medical Bureau and work in this special area, similar to Lourdes."

The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Ormond House, Ormond Quay Upper, Dublin 7 on the 4th September 2006. At the hearing the Appellant was represented by Mr. Owen Hickey, B.L. instructed by Messrs Ward McEllin, Solicitors with Mr. Eamonn Halpin, B.Sc. (Surveying), A.S.C.S., M.R.I.C.S., M.I.A.V.I. and Mr. Patrick Lavelle. The Respondent was represented by Mr. Brendan Conway, B.L. instructed by the Chief State Solicitor's Office with Mr. Colman Forkin, B. Sc. Surveying, ASCS, MIAVI, a Staff Valuer in the Valuation Office.

The property the subject matter of this appeal is Knock Medical Centre, Knock, Co. Mayo. The property comprises a medical centre which was built in 1984 consisting of a reception and office, waiting area, two consulting rooms, two treatment rooms, staff and patient toilets and a kitchen and store room. It is located in the village of Knock and is used as a medical centre.

The property is utilised by a Dr. Diarmuid Murray. However, Mr. Patrick Lavelle, the Director of Our Lady's Shrine, Knock, contends that the property should be excluded from the valuation list.

The property was subject to a revision of valuation in 2005. The Revision Officer then was of the opinion that the medical centre was rateable. Following this, an appeal was made by Mr. Patrick Lavelle. However, having considered the appeal the Commissioner made no change. An appeal to this Tribunal was then lodged.

THE APPELLANT'S CASE:

On behalf of the Appellant, Mr. Lavelle gave evidence. He is the Director of the Knock Shrine Association and is Assistant Manager of the Knock Complex. He has been involved for some 20 years. He gave evidence that 1.5 million pilgrims per year visit Knock, a number of whom would require the services of the Knock Shrine Association. The Association have some 1,200 volunteers to handle the sick and the invalids and also to give medical attention where necessary. In addition the Order of Malta has supplied two fully equipped ambulances. There is a Rest and Care Centre in the Shrine at which nurses and medical attention are available. However, if more serious problems arise an affected person would be taken to the Knock Medical Centre ("the Centre"). The Centre opened in 1984. Previously, medical attention had been provided in the Rest and Care Centre. The Centre is funded by the

Association. All properties in the complex are vested in the St. Jarlath's Diocesan Trust. In his view the occupier was the Knock Shrine Association. He confirmed the accommodation as set out in Mr. Halpin's précis.

Mr. Lavelle gave evidence that Dr. Diarmuid Murray has a key to the Centre. The Order of Malta also have a key; there is in addition a key in the Knock Shrine Association Office.

Mr. Lavelle described the "*rolling contract*" between the Association and Dr. Murray. Initially, Monsignor Horan invited Dr. Murray to open the Centre in Knock. Dr. Murray was at that time based in Ballyhaunis and was asked by Monsignor Horan to live in Knock (Monsignor Horan even offered to provide a house to accommodate Dr. Murray). Dr. Murray is a General Practitioner. He operated initially from the Rest and Care Centre and thereafter from the Centre, the subject matter of this application.

Dr. Murray is paid a fee of €12,500 per quarter, which sum is paid by the Association.

Mr. Lavelle said that the busiest of what he called "*pilgrim days*" for the Shrine are Saturdays and Sundays. Given that significantly higher numbers would attend on these days, particularly in the summer, there would be a higher than normal group of pilgrims with medical conditions and therefore it would be likely that a higher number than normal might require the use of the Centre. If a pilgrim had a particularly awkward or difficult condition a certificate would be sent in advance of the pilgrimage and would be passed on to the Medical Centre in question. A similar practice takes place in Lourdes and Fatima.

Mr. Lavelle stated that Dr. Murray also used the Centre to process claims for what might be termed a "*miracle cure*". While Mr. Lavelle was not aware of whether any cure effected to date had been accorded the status of a miracle he was certainly aware of one circumstance in which an illness had been cured in respect of which cure there was no medical explanation.

Mr. Lavelle indicated that there was no written contract between the Association and Dr. Murray. However, he is responsible for paying Dr. Murray's quarterly fee. The quarterly fee is discussed in the winter of every year. The Association would of course be entitled to terminate Dr. Murray's contract, though it seems that they would first seek authority to do so from the Parish Priest.

It appears that there are six all-night vigils every year in Knock during which Dr. Murray would be on call as he would be on other occasions.

Mr. Lavelle said that Dr. Murray was in partner with Dr. Mullaghey who would work from the Centre in the absence of Dr. Murray.

Mr. Lavelle gave evidence in relation to Dr. Murray's practice. It was a matter of some concern that Dr. Murray was not present himself to give evidence. While no formal objection was taken in relation to the giving of hearsay evidence in this regard, it was suggested that it would have been preferable for Dr. Murray himself to give evidence. However, since no objection was taken the Tribunal heard the evidence in question.

The evidence suggested that Dr. Murray took up practice in 1981. He has resided in Knock since 1984 or 1985. He also has a practice in Ballyhaunis. He works 5 days a week in that practice. His private patients can come and see him in Ballyhaunis or in Knock as he sees fit. He has a GMS list of patients who see him at his practice in Ballyhaunis.

Mr. Lavelle took the view that the Association would be entitled to terminate Dr. Murray's employment. Alternatively, they could exclude him from the Centre if necessary. On one occasion the Centre had to be closed for refurbishment. During this time Dr. Murray operated on call from the Rest and Care Centre. The refurbishment of the Medical Centre was paid for by the Association which also pays for the cleaning and maintenance.

Mr. Lavelle suggested that so far as he was aware Dr. Murray would be available between Monday and Fridays from 9.30am to 12.30pm and from 2.00pm to 4.30pm. On Saturdays and Sundays Dr. Murray would be available exclusively for pilgrims. He would, however, not necessarily be in attendance but would be required to be on call. Mr. Lavelle accepted that Dr. Mullaghey would see patients in Ballyhaunis between Monday and Friday as would Dr. Murray. Mr. Lavelle suggested that the percentage usage of the premises is 75% pilgrim and 25% private patient between April and October with 40% pilgrim and 60% private patient between November and March.

In cross-examination Mr. Lavelle accepted that Dr. Murray already had a practice and a house in Ballyhaunis. He moved to Knock at the request of Monsignor Horan who needed

somebody to attend to the needs of pilgrims as and when they arose. He accepted that the oral contract required the Centre to be available for pilgrim use on Saturdays and Sundays exclusively but that private patients could be seen between Mondays and Fridays. Mr. Lavelle contended that the Centre was owned by the Association which asked Dr. Murray to operate it.

Mr. Lavelle accepted that Dr. Murray had a nurse working with him, employed by Dr. Murray. A part-time receptionist was also engaged by Dr. Murray who would move from Ballyhaunis if required. Dr. Mullaghey, his practice partner, would cover for Dr. Murray in Knock. In his practice as a professional medical practitioner he sees all patients as equal and makes no distinction between pilgrim and non-pilgrim patients. Dr. Murray makes his own arrangements to pay his nurse and receptionist. It is also open to him to negotiate more money from the Association if he sees fit, but he is not paid a rate per pilgrim patient by the Association. Dr. Murray would also update the Order of Malta personnel attached to the Association on the latest training ideas. The Order of Malta would from time to time run training courses in the Centre.

Mr. Lavelle expressed the view that nobody in the Association was medically qualified and that in effect this was entirely the responsibility of Dr. Murray. He accepted that Dr. Murray's professional insurance was a matter for Dr. Murray, although the premises were insured by the Association. Dr. Murray also dealt with the insurance for his own nurse and receptionist. In his view Dr. Murray was responsible for the medical element of the facilities provided by the Knock Shrine Association (including the provision of medication). Dr. Murray would give advice to the Association as to how the clinic should be resourced (e.g. medication, equipment etc). If Dr. Murray recommended that another doctor be brought in the Association would have to give serious consideration to this.

Mr. Lavelle accepted that Dr. Murray effectively ran a practice, both from Ballyhaunis and Knock, with the help of Dr. Mullaghey.

Mr. Lavelle also accepted that Dr. Murray would be facilitated if he wished to take time out to do a training course.

In re-examination Mr. Lavelle suggested that in the absence of Dr. Murray the medical centre would be staffed by volunteer nurses, the Order of Malta and visiting doctors. He had no clear information on the pay received by the receptionist or nurse. He expressed the view that without the financial contribution paid to him by the Association, Dr. Murray might well not operate from Knock.

The Respondent did not go into evidence.

SUBMISSIONS:

THE APPELLANT'S SUBMISSIONS:

On behalf of the Appellant, Mr. Owen Hickey referred the Tribunal to Schedule 4, paragraph 8 of the Valuation Act, 2001. He contended that the property in question was a "*land, building or part of a building used by a body for the purposes of caring for sick persons*" which was "*a body which is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity as aforesaid....*".

It was submitted that the evidence of Mr. Lavelle indicated that the Knock Shrine Association was a non-profit organisation which was totally voluntary. Private profit was not made by the Knock Shrine Association including through the use of the Medical Centre. The Association was dependant on collections and donations and all monies so raised went back into the Knock Shrine Association to allow it to maintain the shrine and the Centre. The Association needed approximately €1,000,000 per annum in order to maintain its expenses and staff. In his submission the Association was not established to make a private profit, nor were its affairs conducted to make a private profit. The Association gets no money from the Exchequer.

Mr. Hickey submitted that the Medical Centre was a building used for caring for the sick and was used by a body which was not established for private profit. In his submission the Act should not be interpreted so as to impose a fresh liability; the property had not previously been rated in 1987.

Mr. Hickey submitted that since the word “*exclusively*” is not used in paragraph 8 of Schedule 4 (although it is used in paragraphs 10 and 16 of the same Schedule) the other uses the Centre is utilised for were irrelevant.

In his submission the occupier of the premises is not Dr. Murray but Knock Shrine Association. He accordingly sought to have the Valuation Certificate amended to declare Knock Shrine Association to be the occupier.

By way of alternative submission, Mr. Hickey contended that Knock Shrine Association was in paramount occupation. Even if Dr. Murray were to be regarded as being in occupation he was not in exclusive occupation. If there was a joint occupation in his submission Knock Shrine Association was in paramount occupation. In this regard he referred us to the decision of the High Court in **Carroll v Mayo County Council [1967] I.R. 364**. He adopted various portions of the Judgment as part of his submissions including the view expressed by Lord Russell of Killowen in **Westminster Council v Southern Railway** (quoted at page 366 of the Judgment):

“rateability does not depend on title to occupy, but on the fact of occupation.”

At page 367 Henchy J expressed the view:

“but it is well settled by a variety of unimpeachable authorities that a tenant or a lessee may be in rateable occupation although he does not exclude the lessor or landlord and may have no title to exclude him by reason of the covenants or conditions of the lease or tenancy by reason of some statutory provision.”

Henchy also expressed the view in the said case:

“In the case of a lodger or hotel guest, the occupier of the room may have the exclusive use it as far as third parties are concerned, but the landlord or hotelier concurrently occupies and uses the premises for the purposes of his business and is therefore the rateable occupier.”

At page 368 Henchy expressed the view:

“The de facto position (which, rather than the de jure position, is what I must look at) during those years was that the use and enjoyment exercised by the defendants was as full as if they had a tenancy or lease. If they had, as trespassers, exercised the same degree of use and enjoyment, they would be equally liable for the rates. The right to exclude the owner in such cases is not the test. It is sufficient if it be shown that there was such a withdrawal of the owner from the occupation as enables a court to hold that the licensee (or lessee, or tenant, or even trespasser) was in “immediate use or enjoyment” as the statute puts it, or in paramount occupation as some of the cases say.”

In his submission the issue here was whether or not the owner of the property, being the Knock Shrine Association, had withdrawn from the property to such an extent as to leave Dr. Murray in the immediate use or enjoyment or paramount occupation of the premises in question.

THE RESPONDENT’S SUBMISSION:

On behalf of the Respondent, Mr. Conway referred to the provisions of Schedule 4, paragraph 8. In his submission there was no evidence of use by the Knock Shrine Association of the Medical Centre to care for sick persons. The person who used the premises was not Knock Shrine Association but Dr. Murray. For the purposes of occupation it was immaterial that the Knock Shrine Association had built or owned the premises.

In his submission the evidence suggested that the relationship between the Association and Dr. Murray disclosed Dr. Murray as having immediate use and enjoyment of the property and therefore he was the occupier. The nature of his user is as General Practitioner. Such services as are provided by him are provided by him in his capacity as General Practitioner. In addition it is clear that the Association leave the management of the Medical Centre to him in his capacity as a professional medical person.

Mr. Conway submitted that once Dr. Murray was providing professional medical services he must be deemed to be in occupation. It was irrelevant that Dr. Murray might be providing services for less profit than he might otherwise obtain elsewhere. Mr. Conway submitted that Dr. Murray had unrestricted use of the premises to carry out his practice and that his only

occupation was in his capacity as a General Practitioner rather than any other capacity; he did not provide any services other than medical services.

Mr. Conway also referred to the case of **Carroll v Mayo County Council**. In his submission de facto occupation was what mattered. The rateability depended not on title to occupy but on the fact of occupation.

Mr. Conway opened Section 3 of the Act. This defines the occupier as being “*every person in the immediate use or enjoyment of the property*”.

In his submission it was impossible to say that Dr. Murray was not in immediate use or enjoyment of the property. He is present either personally or through his partner to provide the medical services in question.

In his submission Dr. Murray, as a General Practitioner, had unrestricted access to the use and enjoyment of the premises in order to provide the services in question. In effect Knock Shrine Association had withdrawn from the premises in question in the same manner as if they had granted a lease to Dr. Murray. Again referring to **Carroll v Mayo County Council**, Mr. Conway submitted that it was sufficient if such withdrawal by the owner was such as to leave the licensee or other person in immediate use or enjoyment of the premises. In his submission to describe Dr. Murray’s presence as anything other than “*immediate use and enjoyment*” would be a distortion.

Mr. Conway submitted that paragraph 8 of Schedule 4 did not apply. Dr. Murray as occupier is not a “*body*” within the meaning of this section. Nor can he be regarded as somebody who was established within the meaning of the paragraph for a purpose other than that of making a private profit. In his submission the premises at Knock should be regarded as indistinguishable from the premises at Ballyhaunis. While acknowledging that Dr. Murray did not pay rent, Mr. Conway submitted that in effect Dr. Murray provided services to pilgrims of the Knock Shrine Association effectively in lieu of rent; in addition he was paid €12,500 per quarter (€50,000 per annum) to provide the services in question. In conclusion, Mr. Conway submitted that Dr. Murray was the same as any other General Practitioner in the country. He sees patients in his capacity as a General Practitioner. While the Knock Shrine Association undoubtedly obtained a benefit from his willingness to see pilgrim patients (for

which the Association paid Dr. Murray), for the purposes of the issue of occupation of the premises in question that benefit to the Knock Shrine Association was irrelevant.

APPELLANT’S REPLY:

By way of reply it was submitted by Mr. Hickey that the premises had not been originally deemed to be rateable in 1987. At that time the occupier was thought to be the Knock Medical Centre. Mr. Hickey also submitted that there were in effect two entities utilising the premises being the Knock Shrine Association and Dr. Murray. In order to exclude the property from the ambit of paragraph 8 of Schedule 4 the Knock Shrine Association would have to be making no use of the premises; otherwise it could not be excluded, as it would still be an entity which had “*immediate use and enjoyment*”.

THE LAW:

Section 3 of the Valuation Act, 2001 (“the Act”) defines occupier as meaning “*in relation to property (whether corporeal or incorporeal), every person in the immediate use or enjoyment of the property*”.

Schedule 4 (“Relevant Property Not Rateable”) includes (at paragraph 8):

“*Any land, building or part of a building used by a body for the purposes of caring for sick persons, for the treatment of illnesses or as a maternity hospital, being either:-*

- (a) *a body which is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity as aforesaid, or*
- (b) *a body the expenses incurred by which in carrying out an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer and the care or treatment provided by which is made available to the general public (whether with or without a charge being made therefor).”*

It is agreed by both parties that paragraph 8(b) does not apply.

It seems to us that the first issue to be decided is the identity of the entity in occupation of the premises in question.

As is clear from Section 3 of the Act ownership of the property in question is irrelevant for the purposes of occupation – what matters is the “*immediate use or enjoyment of the property*”. This principle is also clearly enunciated by Henchy J in **Carroll v Mayo County Council**.

There is no doubt that the Knock Shrine Association derives a benefit from the presence of Dr. Murray (or, where appropriate, his partner, Dr. Mullaghey) in the Medical Centre in question. This is not incidental benefit; the Association pays the sum of €50,000 per annum to Dr. Murray in order to ensure that he is available to see pilgrim patients should this be required.

It does seem to us however that the person in actual occupation of the premises is Dr. Murray. It is undoubtedly correct that he is the person who is entitled to immediate use or enjoyment of the premises. In addition to the pilgrim patients who may visit him on Saturdays and Sundays (in respect of which days he is required to be on call) Dr. Murray and/or his partner are entitled to, and it would appear do, see other what might be called “non-pilgrim” patients in the Knock premises between Monday and Friday. The evidence suggests that there is nothing to prevent Dr. Murray or his partner seeing a non-pilgrim patient on a Saturday or Sunday provided this did not interfere with his obligations to the Association on those days. We are also struck by the fact that he is responsible for the running of the Medical Centre in question; he employs a receptionist and nurse to assist him in this regard. He also gives directions as to the levels of medication and equipment which he requires the Association to provide him with for the purposes of attending to patients.

In our view Dr. Murray cannot be regarded as being the equivalent of a lodger or hotel guest in a hotel. A lodger/hotel guest avails of the services provided by a hotel for a limited period. However, Dr. Murray is not availing of a service provided by the Knock Shrine Association; he is himself occupying the premises in order to provide medical services. In our view Dr. Murray is in immediate use or enjoyment of the premises in question. To test this proposition the question may be asked, who is in more immediate use or enjoyment of the premises than Dr. Murray? In our view there is no other person who can be said to meet this qualification. While it is true that the Association derives a benefit from the use of the premises by Dr. Murray and therefore to that extent can be notionally said to obtain some “*enjoyment*” from

the use of the premises as a Medical Centre we are of the view that this does not mean that the Association is in immediate use or enjoyment of the premises in question.

We note that the phrase "*paramount occupation*" is used from time to time in place of the phrase "*immediate use or enjoyment*". It appears to us that the phrase "*paramount occupation*" derives from case law rather than from statute. Section 3 of the Valuation Act, 2001, however, makes it clear that occupation is to be defined in terms of immediate use or enjoyment. It is our view that the premises in question are occupied by Dr. Murray and not by any other person. However, even if we were to take the view that there were two notional occupiers, if we were to rank one entity ahead of the other as paramount occupier we would have no hesitation in deeming Dr. Murray to be in paramount occupation.

Having regard to this conclusion we are of the view that since Dr. Diarmuid Murray is the occupier of the premises in question, paragraph 8 of Schedule 4 does not apply. Since the Centre in question is in effect the Medical Centre of Dr. Murray we do not believe that it can be regarded as "*..land, building or part of a building used by a body for the purposes of caring for sick persons or the treatment of illnesses..*" where the "*body is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity as aforesaid..*". Dr. Murray and his partner are in business on their own account. We doubt if anybody would suggest that they were established deliberately not to make a private profit from their activities. Indeed it is questionable whether or not Dr. Murray and/or his partner would be deemed to be a "*body*" within the meaning of paragraph 8 of Schedule 4 at all. Insofar as the Centre is in effect a surgery of a general practice we are of the view that even if Dr. Murray and/or his partner were to be regarded as such a body the surgery of such a practice does not fall within the wording of paragraph 8 of Schedule 4 of the Act.

In our view Dr. Murray is a General Practitioner just the same as any other General Practitioner. It is undoubtedly the case that he receives a certain fee from the Association in return for which he agrees to see their "*pilgrim patients*". However, this is not dissimilar to a situation where a General Practitioner agrees in return for payment of a flat fee to see all of the employees of a particular local employer should they become ill. The fact that such a General Practitioner might have one or two days set aside a week in his surgery to see such patients would not in our view indicate that the local employer in question would be therefore regarded as being in occupation of the surgery in question.

DECISION:

The Tribunal determines the occupier of the premises the subject matter of this appeal to be Dr. Diarmuid Murray. The Tribunal determines that the premises do not come within the provisions of paragraph 8 of Schedule 4 of the Valuation Act, 2001. Therefore the premises are rateable. The appeal is dismissed.

And the Tribunal so determines.