

Appeal No. VA09/4/007

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

Aontacht Phobail Teoranta

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2197084, Shop at Lot No. 48.49A 50CE/1, Arden Road, Puttaghaun, Tullamore Urban, Tullamore UD, County Offaly.

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Brian Larkin - Barrister

Member

Michael F. Lyng - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 28TH DAY OF APRIL, 2010

By Notice of Appeal dated the 12th day of November, 2009, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €24.00 on the above-described relevant property.

The Grounds of Appeal are in the Notice of Appeal, a copy of which is attached at Appendix 1 to this judgment.

The appeal proceeded by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay, Dublin on the 8th day of February, 2010. At the hearing, the appellant was represented by Ms. Lorraine Healy, BSc (Hons) of GVA Donal O Buachalla and Mr. Owen Hickey, SC. Mr. Tony Corry, General Manager of Aontacht Phobail Teoranta (APT) also gave evidence. The respondent was represented by Mr. James Costello, BSc (Property Management), a Valuer in the Valuation Office and Mr. Michael O'Connell, BL, instructed by the Chief State Solicitor.

Both sides furnished written legal submissions. The appellant called oral evidence.

Issue

Rateability

The Property Concerned

The property is a shop located in Tullamore General Hospital, Arden Road, Tullamore, Co. Offaly. The shop has an area of 12.65 sq. metres with a frontage of 5.5 metres and faces the main entrance to the hospital.

Tenure

A formal lease does not exist.

Rating History

The subject premises was first assessed in September 2008 and a proposed Valuation Certificate (RV €24) issued on 3rd December, 2008. Following representations to the Revision Officer contesting rateability, the Valuation Certificate issued unchanged on 3rd February, 2009.

There was a subsequent appeal to the Commissioner of Valuation on 11th March, 2009. There was no alteration to the rateable valuation and the Valuation Certificate issued, again unchanged, on 16th October, 2009.

It is against this decision of the Commissioner that an appeal to the Valuation Tribunal was lodged on 12th November, 2009.

Introduction

The Notice of Appeal dated 12th November, 2009, states that the issue for determination between the parties is (a) whether the subject property occupied by APT is property occupied by “the State” or by “an office of State” as defined in section 15(3) of the Valuation Act, 2001, or (b), in the alternative, the subject property is relevant property not rateable as per Schedule 4 of the Act with particular reference to paragraphs 8, 10, 14 and 16 thereof.

The appellant’s contention is that APT does fall within the terms of either (a) or (b) above and therefore the property is not rateable. The respondent contends that APT falls outside of those terms and so the property occupied by APT is rateable.

At the commencement of the Tribunal hearing, however, Mr. Owen Hickey indicated that the relief he was seeking would be confined to paragraph 14 of Schedule 4 of the Act or in the alternative paragraph 16 of Schedule 4. He was not now proceeding under section 15 of the Act or paragraphs 8 or 10 of Schedule 4 for relief.

Appellant’s Evidence

In advance of opening submissions on behalf of APT, evidence was given on behalf of the appellant by Mr. Tony Corry, General Manager, APT. In his evidence, which was in line with his précis adopted under oath, Mr. Corry outlined the background and activities of APT. He stated that APT is a registered charity incorporated in 1989 which develops initiatives to promote the economic and social integration of people with disabilities. Mr. Corry indicated that APT continues to undertake a wide range of initiatives in the fields of housing, access, training, employment, education and disability awareness. Mr. Corry added that APT also provided the following services:

- “Occupational Guidance Service: On behalf of the HSE, APT’s Occupational Guidance Advisers provide information, advice, support and direction to people with disabilities.
- Employer Based Training: This addressed the job needs of people with disabilities through ‘on-the-job’ training schemes, work experience and a career direction service.
- In Hospital’ Shops Service: The shops’ trading as ‘Cheers’ primary purpose was the training and employment of people with disabilities. The shops aim to provide a

quality service to patients, visitors and staff of the hospitals. The shops, overall, operate to break even with profits in some, offsetting losses in others.”

Mr. Corry rejected any notion that the subject property was a lucrative fundraising facility, in response to a question put by Mr. Hickey, but that it was not a manifest intention to operate at a loss either. The primary purpose of APT, Mr. Corry added, was caring for the disabled, be it through the shops or otherwise.

Mr. Corry, again replying to Mr. Hickey, rebutted any suggestion that he had not explained to the respondent how the subject shop was operated on a daily basis. He stated emphatically that he answered any questions put to him which perhaps might not have included all possible questions, such as the numbers employed and the proportion with disabilities.

Under cross-examination by Mr. O’Connell, Mr. Corry provided details of manning levels and hours of opening in the shop including a breakdown of staff with disabilities and staff without disabilities.

Questioned by Mr. O’Connell in relation to the 2007 accounts for APT, Mr. Corry provided detailed responses to Income and Expenditure account queries and clarified the position with regard to wages and wage rates, particularly those referable to disabled employees. In particular, Mr. Corry explained that a gross margin surplus in the shop trading account of €736,162 (GM % 32.32) was not at variance with APT’s mission statement to break even as wages and other overheads had not been factored in by Mr. O’Connell.

Appellant’s Submissions

Mr. Hickey, on behalf of the appellant in relation to relevant property not rateable, referred to paragraph 14 of Schedule 4 of the Valuation Act, 2001, which provides that:

“14 – Any land, building or part of a building occupied for the purpose of caring for elderly, handicapped or disabled persons by a body, 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 on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer.”

shall be relevant property not rateable.

In his submissions, Mr. Hickey contended that:

1. The test for compliance with that provision is “a body” the affairs of which, are not conducted etc., and that under that heading the appellant qualified. Mr. Hickey suggested that the respondent in its submissions appeared to confuse “body” and “shop.”
2. The Tribunal appeal, **VA05/3/057 - St. Joseph’s Foundation** is on all fours with the subject case. Paragraph 3 of the findings of that judgment is particularly relevant in this context, viz *“The Tribunal finds that the subject property is occupied by the Appellant for the purpose of caring for handicapped or disabled persons and that the Appellant is a body which is not established for profit and does not make a profit from the provision of such care and whose expenses are defrayed wholly or mainly from moneys provided by the Exchequer.”*
3. The officers of the Commissioner of Valuation have a duty of reasonable enquiry to ascertain what is going on in the shop.
4. It was not fatal to the appellant’s case if the employees are paid “a small amount of money.”
5. In **St. Vincent’s Healthcare Group Ltd.**, Unreported, 26th February, 2009, on appeal to the High Court, the “purpose test” was defined by Cooke J at paragraph 34 as *“– not just the nature of the activity carried on in the building (the user) but also the reason or objective (that is, the purpose) of the occupying body in engaging in that use which gives rise to the exemption.”* Thus the test is “the purpose” and not simply the activity which it presents. “Use” and “purpose of the use” go to exemption.
6. As APT, the subject and “a body”, has no commercial objective, is non-profit making and where small profits achieved are ploughed back into other areas of the organisation, then it qualifies as relevant property not rateable.

Respondent's Submissions

Mr. O'Connell, in his submissions, on behalf of the respondent contended as follows:

1. **St. Joseph's Foundation** can be distinguished from the subject property on factual grounds in that training took place in the coffee shop in that appeal.
2. Statement of purpose is not sufficient. One must look to see how it's achieved in the subject property.
3. In support of his argument, Mr. O'Connell referred to paragraph 39 of **St. Vincent's Healthcare Group Ltd.** and contended that the facts in this appeal were dissimilar.
4. In examining use, one must look at all facts – staff, hours of work, profit etc.
5. The shop in APT and the carpark in **St. Vincent's Healthcare Group Ltd.** are not analogous. **St. Vincent's** carpark was ancillary to the main purpose and ministered to the hospital.
6. The nature of the activities conducted in the subject shop points to the weakness of the appellant's case.
7. Paragraph 14(b) is not satisfied. The expenses incurred in carrying on an activity as aforesaid relate to the shop and not to a 'body'.
8. The burden of proof is on the appellant. If the appellant does not produce information for the Valuation Office, there is no duty of enquiry on the Revision Officer or the Appeal Officer.

The Appellant's Reply

Mr. Hickey on behalf of the appellant contended that:

1. There is a duty of enquiry on the Appeal Officer to ask relevant questions. Insufficient questions were put by the respondent to "*get over the line in this case.*"

2. Even if the facts in **St. Joseph's** and **St. Vincent's Healthcare Group Ltd.** are not on all fours with the subject property, the legal principles referred to in these cases are applicable to APT.
3. Paragraph 14(a) of Schedule 4 was the basis for his primary submission.
4. The sworn evidence of APT's General Manager, Mr. Tony Corry, goes towards the "care of the disabled" and the percentage of the staff in the shop who are disabled does not dilute the legal requirement.
5. The High Court test of "purpose" as enunciated in **St. Vincent's Healthcare Group Ltd.** is the criterion for relief.

The Law

The following were the relevant legislative sources canvassed:-

Statute Law:

- The Valuation Act, 2001, sections 3 and 15(3) and paragraphs 8, 14 and 16 of Schedule 4.

Case Law:

- *St. Vincent's Healthcare Group Ltd. v Commissioner of Valuation*, Unreported, Cooke J, 26th February, 2009.
- *Aldous & Others v Southwark London Borough Council* (1968) 1 WLR 1671.
- VA90/3/003 - Limerick Youth Services Board.
- VA04/3/041 - Sisters of Nazareth.
- VA05/3/057 - St. Joseph's Foundation.
- *Caribmolasses Company Ltd. v Commissioner of Valuation* [1994] 3 IR 189.
- VA96/6/012 - Telecom Eireann.
- *Oxfam v Birmingham City District Council* [1976] AC 126.
- *Belfast Association for Employment of Industrious Blind v Commissioner of Valuation for Northern Ireland* [1968] NI 21.

Findings

The Tribunal having carefully considered the factual evidence and legal argument advanced on behalf of the parties makes the following findings:

1. At the hearing the parties were represented by Counsel and the Tribunal is indebted to them for the depth and quality of their submissions, both oral and written, which referred the Tribunal to a range of authorities and legal precedents. Copies of Counsel's written submissions are to be found in Appendix 2 attached to this judgment.

2. APT is a charitable organisation within the meaning of section 3 of the Valuation Act, 2001. The Memorandum of Association confirms that. Paragraph 2(d) states that among its objects APT was established "*To set up, establish, promote, organise and operate a workshop, rehabilitation and training centre for disabled, disadvantaged or deprived persons, to provide them with instruction, training and general work experience; to provide a placement service to provide or procure employment for such persons and generally to improve job prospects for them.*", while paragraph 6 of the Memorandum states that "*The income and property of the Association, whencesoever derived, shall be applied solely towards the promotion of the objects of the Association as set forth in this Memorandum of Association, and no portion thereof shall be paid or transferred directly or indirectly, by way of dividends, bonus or otherwise howsoever, by way of profits, to the members of the Association.*"

3. The Tribunal is satisfied, on the evidence of Mr. Corry and Counsel's oral submissions, that the subject property falls within the exemption allowed under paragraph 14(a) of Schedule 4 of the 2001 Act being:

"Any land, building or part of a building occupied for the purpose of caring for elderly, handicapped or disabled persons by a body, [...]

(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 foresaid, [...]"

 and shall be relevant property not rateable.

4. The Tribunal does not accept Mr. O'Connell's narrow interpretation of the "caring" concept enshrined in paragraph 14(a) as applying to the subject property. The Tribunal is satisfied that his quantifying of disabled persons' involvement along percentage lines of total worker input into the said shop in terms of hours worked etc., does not deprive 'the

body' of its caring status. Percentages did not dilute the legal principles which went to *'purpose for engaging in the use'*.

5. **St. Joseph's Foundation**, an analogous case to this, is authority for the fact that mathematical proof of disabled persons' involvement was not mandatory.
6. The dicta of Cooke J, in **St. Vincent's Healthcare Group Ltd.**, 26th February, 2009, High Court, is the litmus test in the present context, when in the course of a reference to paragraph 8 of Schedule 4 where the wording is virtually identical to paragraph 14, he differentiated as follows: *"It is therefore not just the nature of the activity carried on in the building (the user) but also the reason or objective (that is, the purpose) of the occupying body in engaging in that use which gives rise to the exemption."*
7. The Tribunal is satisfied that the subject shop premises are under the control and occupation of the APT group which has as its primary purpose the training and employment of people with disabilities. The Tribunal is satisfied that it was not established for the purpose of making a private profit from its activities and notes that small profits, if and when they do arise, are recycled to offset losses in other areas within the organisation.
8. As the Tribunal is satisfied that the appellant meets the requirements of paragraph 14(a) of Schedule 4 of the Valuation Act, 2001, for exemption purposes, it is not necessary therefore to adjudicate on the said relief being sought under alternative provisions of the Act embodied in Schedule 4 although also canvassed.

Determination

The subject property is occupied by the appellant which is a body qualifying within the meaning of paragraph 14(a) of Schedule 4 of the Valuation Act, 2001 and thus is relevant property not rateable. Accordingly, it is exempt from rates and the appeal is allowed.

And the Tribunal so determines.