

Appeal No. VA02/4/041

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

M.T. Hamm Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Map Reference 7H/Unit 6 (fl.1), Townland: Killinenny, RD. Rathfarnham Village, ED. Firhouse Village, County Dublin

B E F O R E

Frank Malone - Solicitor

Deputy Chairperson

Patrick Riney - FSCS FRICS MIAVI

Member

Joseph Murray - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 15TH DAY OF MAY, 2003

By the Notice of Appeal a copy of which is set out in the First Schedule hereto the above named Appellant appealed to this Tribunal against a certain decision made by the Commissioner.

1. This Appeal proceeded by way of oral hearing which took place at the offices of the Valuation Tribunal, Dublin on the 19th day of February 2003. Mr Eamonn S. Halpin B.Sc.(Surveying), A.S.C.S., A.R.I.C.S., M.I.A.V.I. of Eamonn Halpin & Co. appeared on behalf of the Appellant while Mr Patrick Kyne B.E., Graduate Diploma in Planning & Development Economics, A.S.C.S., M.R.I.C.S., a District Valuer in the Valuation Office with over 17 years experience was the Appeal Valuer. In accordance with the Rules of the Tribunal the parties had prior to the commencement of the hearing exchanged their précis of evidence in both appeals and submitted the same to this Tribunal. On the day of the oral hearing the Tribunal also heard two other appeals namely McInerney Construction Ltd v. Commissioner of Valuation VA02/4/038 and Hogan & Associates Chartered Accountants v Commissioner of Valuation VA02/4/040 in which legal issues similar to those in this appeal arose.

2. VALUATION HISTORY

Rateable Valuation	€	Publication Date
Revision	95.23	10th November 2001
Revision	75.00	1st May 2002.
First Appeal	75.00	17th October 2002

The First Appeal was against the determination of the Revision on the 1st of May 2002. It is against the decision of the Commissioner on First Appeal (Publication Date 17th October 2002) that this Appeal lies to the Tribunal. Both Valuers agreed that there was a mistake in Mr Kyne's précis in relation to the Valuation Date and that the correct Valuation Date was 1st May 2002.

3. QUANTUM

The parties agreed a Rateable Valuation of €65 subject to the legal issues hereinafter appearing.

4. APPELLANT'S CASE AND RESPONDENT'S CASE RELATING TO THE NOTICE ISSUE AND THE LAW APPLICABLE TO THIS APPEAL

Mr Halpin adopted the legal and factual submissions made by him in the McInerney Construction Ltd and Hogan & Associates Chartered Accountants appeals. See Paragraph 6(a) of the Tribunal Judgment in those appeals.

Mr Kyne adopted the legal and factual submissions made by him in the McInerney Construction Ltd and Hogan & Associates Chartered Accountants appeals. See paragraph 7(a) of the Tribunal Judgment in those appeals.

5. FURTHER SUBMISSIONS

The Tribunal requested and both Valuers agreed to get instruction from the parties as to what legislation governed the notice question and the quantum issue in this appeal and to submit letters to the Tribunal dealing with these matters.

The Tribunal indicated that they would consider the appeal as it stood after these letters came in and that it might be necessary to re-enter the appeal for further hearing.

Mr Halpin indicated that he also would need to obtain instructions from his client.

The Tribunal have received a letter from Mr William M. Walsh, Managing Valuer, Valuation Office dated 8th April 2003 a copy of which is set out in the Second Schedule hereto. The Tribunal have also received a letter from Mr Halpin dated 11th April 2003 a copy of which is set out in the Third Schedule hereto. Both of these letters deal with the questions raised and copies of the relevant letter in each case have been sent by the Tribunal to the other party. After the receipt of these letters in the Tribunal Office and the copying of the same by the Tribunal to the other party both Valuers were contacted by the Tribunal Registrar and indicated to her that they did not wish to have this appeal re-entered for further hearing.

It is noted by the Tribunal that Mr Halpin now appears to take a different view on the notice question from the one he expressed at the hearing. This is understandable as although he is a highly experienced Valuer and Rating Consultant he is not a legal expert and had to deal with complex legal issues at the hearing at short notice. The Tribunal would like to thank both Valuers for their assistance in dealing with these complex legal issues.

FINDINGS

6. LAW APPLICABLE TO THE DETERMINATION OF QUANTUM

The Tribunal make no finding as to which law applies to the determination of quantum the parties to the appeal having agreed on quantum subject as hereinbefore appears.

7. LAW APPLICABLE TO THE NOTICE QUESTION, TRANSITIONAL PROVISIONS OF SECTION 57 OF THE VALUATION ACT, 2001 AND ESAT TELECOM V. COMMISSIONER OF VALUATION VA01/1/015 and VA01/1/016

The Valuation Act, 2001 came into force on the 2nd of May 2002. See Valuation Act, 2001 (Commencement) Order 2002 SI 131/2002.

The Valuation Act, 2001 repealed the Valuation Act, 1988 which contained in Section 3 (4) (b) thereof provision for the notification of the outcome of First Appeals.

Section 3 (4) (b) of the Valuation Act, 1988 provided as follows:

“ the owner and occupier, where known, shall be notified by the rating authority of the determination of the application and of his right to appeal in accordance with Sections 19 and 31 of the Act of 1852 against the valuation determined by the Commissioner of Valuation and shall also be notified by the rating authority of the outcome of this appeal”

Section 33(2) of the Valuation Act, 2001 provides as follows :-

“The Commissioner shall consider the appeal and may as he or she thinks appropriate –

(a) disallow the appeal, or

(b) allow the appeal and, accordingly, do whichever of the following is appropriate -

(i) amend the value of, or any other detail in relation to, the property, the subject of the appeal, as stated in the relevant valuation list and accordingly, issue a new valuation certificate in relation to the property to –

(I) the occupier of the property,

(II) the rating authority in whose area the property is situate, and

(III) if the said occupier or authority is not the appellant, or is not the only appellant, to the appellant or each other appellant, as the case may be,

(ii) decide that the property, the subject of the appeal ought to be included in, or, as the case may be, ought to be excluded from, the relevant valuation list and –

(1) in the case of a decision that the property ought to be so included-

(A) determine the value of the property, and

(B) issue a valuation certificate in relation to the property to each of the persons referred to in subparagraph (i),

(11) in the case of a decision that the property ought to be so excluded

notify each of the persons referred to in subparagraph (i) of that decision,

(iii) amend any detail in relation to the property, the subject of the appeal, stated in the relevant notice under section 28(7) and, accordingly, notify each of the persons referred to in subparagraph (i) of that amendment.”

The question arises as to which law applies to the notification of the outcome of these First Appeals, viz is the applicable law the Valuation Act, 1988 or the Valuation Act, 2001.

Maxwell on the Interpretation of Statutes, Twelfth Edition at page 222 states the following : -

“The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the courts. No person has a vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being, by or for the court in which he sues, and if an Act of Parliament alters that mode of procedure, he can only proceed according to the altered mode. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.”

The Notice of Appeal to the Tribunal is dated the 13th November 2002 and was received in Tribunal Office on 15th November 2002. The Notices of Appeal is headed : -

**“NOTICE OF APPEAL TO THE VALUATION TRIBUNAL
(VALUATION ACT, 2001)”**

The Notice of Appeal to the Tribunal make various references to Sections of the Valuation Act, 2001.

Applying the principles quoted from Maxwell the Tribunal find that the question of Notice in the Appeals is governed by the Valuation Act, 2001 because these are procedural provisions. The Tribunal is reinforced in this finding by the references to the Valuation Act, 2001 in the heading and in the body of the Notice of Appeal to this Tribunal. The Tribunal can find no good reason why the provisions as to notice in the Valuation Act, 2001 should not apply to the notification of the outcome of the First Appeal in this case.

Section 57 of the Valuation Act, 2001 contains certain transitional provisions which are of no assistance to the Tribunal. Section 57(1) of the Act provides as follows : -

“A property in relation to which an application has been made under subsection (1) of section 3 of the Act of 1988, being an application in respect of which a determination under subsection (3) of that section has not been made before the commencement of this Act or in respect of which such a determination has been so made but that determination has not been issued under the said subsection (3) before such commencement, shall be deemed to be the property in relation to

which the Commissioner had made an appointment of an officer of the Commissioner under section 28.

This Subsection relates to applications for Revision under Section 3(1) of the Valuation Act, 1988 in which a determination has not been made before the commencement of the Valuation Act, 2001 or in respect of which such determination has been so made but not issued under Section 3 (3) of the Valuation Act, 1988 before such commencement. The Publication Date of the Revision herein is 1st May 2002 and Section 57(1) of the Valuation Act, 2001 does not apply.

Section 57(5) of the Valuation Act, 2001 provides as follows : -

“An appeal made to the Commissioner under, and in accordance with, section 19 or 31 of the Act of 1852, being an appeal in respect of which a determination by the Commissioner under that Act has not been made before the commencement of this Act or in respect of which such a determination has been so made but that determination has not been published under that Act before such commencement, shall be deemed to be an appeal made to the Commissioner under section 30(1).

This Subsection relates to Appeals to the Commissioner under Section 19 or 31 of the Valuation (Ireland) Act, 1852 where a determination has not been made before the commencement of the Valuation Act, 2001 or in respect of which such a determination has been so made but that determination has not been published before such commencement. This subsection clearly does not apply to the First Appeal herein.

Section 57(7) of the Valuation Act, 2001 provides as follows: -

“An appeal made to the Tribunal under, and in accordance with, section 3(5) of the Act of 1988, being an appeal which has not been heard by the Tribunal under that Act before the commencement of this Act or which has been so heard but in respect of which a determination has not been made by the Tribunal before such commencement, shall be deemed to be an appeal made to the Tribunal under section 34.

This Subsection only applies to an Appeal to the Tribunal under, and in accordance with, Section 3(5) of the Act of the Valuation Act, 1988 which has not been heard by the Tribunal under that Act before the commencement of the Valuation Act, 2001 or which has been so heard but in respect of which a determination has not been made by the Tribunal before such commencement. The appeal in this case was launched by a Notice of Appeal in November 2002 (a considerable time after the Valuation Act, 2001 came into operation on the 2nd of May 2002) and accordingly the transitional provisions do not apply. There was no Appeal before the Tribunal in May 2002 in this case.

Mr Halpin in his letter of 11th April 2003 to the Tribunal relies on the Judgment of the Tribunal in the cases of *Esat Telecom v. Commissioner of Valuation VA01/1/015 & VA01/1/016*.

These cases must be distinguished entirely from the present appeals for the following reasons:-

(a). All relevant steps from Revision up to Notice of Appeal to the Tribunal in the *Esat* Appeals were taken under the old Valuation Acts before the 2nd of May 2002 whereas in the current Appeals only the Revisions (Publication Date 1st May 2002) were made before the 2nd of May 2002 and all other steps apart from the Revisions were taken after the 2nd of May 2002.

(b). The *Esat* Appeals were subject to the transitional provisions set out in Section 57 of the Valuation Act, 2001 whereas these transitional provisions do not apply to the present Appeals.

8. CONSEQUENCES OF FINDINGS AT 7

In this case the Commissioner on First Appeal affirmed the Revision. We find that under the provisions of Section 33(2) there is no duty imposed on the Commissioner to issue a new valuation certificate to the appellant arising out of the First Appeal. Section 33(2) imposes no such duty on the Commissioner after determining a First Appeal where he affirms the Revision.

If we are wrong in our finding hereinbefore set out in relation to the duties of the Commissioner under Section 33(2) of the Valuation Act, 2001 and the Commissioner was obliged to issue a new valuation certificate and if it was not issued to the appellant or if it was issued to the appellant but was not received by it, the Tribunal finds as follows. Such a new valuation certificate may be issued

in any of the ways described in Section 66(1) of the Valuation Act, 2001. This Section provides as follows : -

66.(1) A certificate, notice or other document under this Act shall, subject to subsection (2), be addressed to the person concerned by name, and may be issued to, given to or, as the case may be, served on the person in one of the following ways:

- (a) by delivering it to the person,*
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address,*
- (c) by sending it by post in a prepaid letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address*
- (d) where the address at which the person ordinarily resides cannot be ascertained by reasonable inquiry and the certificate, notice or other document relates to land, by delivering it to some person over 16 year of age resident or employed on the land or by affixing it in a conspicuous position on or near the land or*
- (e) by such other means as may be prescribed.*

(2) Where a certificate, notice, or other document under this Act is to be issued or given to, or served on, a person who is the owner or occupier of land and the name of the person cannot be ascertained by reasonable inquiry it may be addressed to the person by using the words the owner or, as the case may require, the occupier.

(3) A person who, at any time during the period of three after a certificate, notice or other document is affixed under subsection (1)(d), removes, damages or defaces the certificate notices or other document without lawful authority shall be guilty of an offence.

(4) For the purposes of this section, a company shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office of place of business.

In the circumstances outlined the provisions of Section 63(3) of the Valuation Act, 2001 would apply. This provides as follows : -

“(3) The fact that a valuation certificate or new valuation certificate, or a draft of such a certificate proposed to be issued to the person concerned—

- (a) has not been issued, as required by this Act, to the person concerned, or*
- (b) has been issued in accordance with this Act to that person but has not been received by him or her,*

shall not deprive of its effect for the purposes of this Act, or any other enactment, any matter or particular entered in the relevant valuation list.”

By virtue of the provisions of Section 63(3) of the Valuation Act, 2001 if the new valuation certificate was not issued to the Appellant or if it was issued to it but not received by it that does not deprive of its effect any matter or particular entered in the valuation list. The Tribunal find that in the circumstances outlined there are no adverse consequences for the Commissioner and that the matters and particulars set out in the extract from the Valuation List contained in the Valuation Certificate appended to Mr Kyne’s précis have full effect as if a new valuation certificate had been issued to the Appellant and received by it.

9. GENERAL

- (a). The Tribunal have not considered it being unnecessary in the circumstances to do so whether the Notice of Appeal to the Tribunal was such as to allow the question of “Notice” to be raised.
- (b). The Tribunal make no findings on the question as to whether or not a new valuation certificate was issued and received it being unnecessary in the circumstances to do so and the Tribunal not having heard sufficient evidence to decide the issue.
- (c). The legal argument before the Tribunal was confined to the submissions of the respective Valuers at the oral hearing hereinbefore mentioned and the letters set out in the Second and Third Schedules hereto. The Tribunal would have preferred to have had a further hearing for legal submissions or written legal submissions after these letters were received by the Tribunal but as the time limit for decision by the Tribunal is about to expire this is not possible.

10. DETERMINATION

In view of the foregoing and again noting the agreement of the parties to a Rateable Valuation of €65 subject to the legal issues hereinbefore mentioned the Tribunal determines the RV of the relevant subject property to be €65.