Appeal No. VA06/1/019

**AN BINSE LUACHÁLA**

**VALUATION TRIBUNAL**

**AN tACHT LUACHÁLA, 2001**

**VALUATION ACT, 2001**

**J. Buckley & Company** **APPELLANT**

**and**

**Commissioner of Valuation** **RESPONDENT**

RE: Office(s) at Lot No. 2 Milton Terrace (Floors 0,-1,1) St. Yves, Seapoint Road, Bray No.2, Bray UD, County Wicklow

B E F O R E

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| **John O'Donnell - Senior Counsel** | **Chairperson** |
| **Joseph Murray - B.L.** | **Member** |
| **Mairéad Hughes - Hotelier** | **Member** |

**JUDGMENT OF THE VALUATION TRIBUNAL**
**ISSUED ON THE 11TH DAY OF SEPTEMBER, 2006**

By Notice of Appeal dated the 14th day of March 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €41.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal and in a letter attached thereto, a copy of which are in the Appendix attached to this judgment.

**PRELIMARY ISSUE**

Whether the Tribunal has jurisdiction to hear an appeal in circumstances where the first appeal to the Commissioner of Valuation was deemed by him to be out of time.

**Hearing**
12th June 2006 at Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7.

**Appearances**
Appellant: Mr. Liam Stafford, BL, instructed by J. Buckley & Company.
Respondent: Mr. Brendan Conway, BL, instructed by the Chief State Solicitor.

Both sides furnished written legal submissions. Neither side called oral evidence as the issue was in essence a matter of legal interpretation.

**Background**

The Appellant is a Solicitor having premises at Seapoint Road, Bray, County Wicklow. The Respondent proposed to value those premises and a proposed Valuation Certificate issued on the 19th September 2005 valuing the premises for the purposes of the Valuation Acts at €50. Thereafter representations in writing were made by the Appellant on the 12th October 2005 which were acknowledged by acknowledgement issued by the Respondent on the 12th October 2005. What is described as a "*standard valuation report*" was provided by the Respondent to the Appellant on the 2nd November 2005.

On the 6th December 2005 the Appellant wrote to Mr. Aidan McDaid of the Valuation Office by email and post. This letter contained what were described as supplementary representations to the Revision Officer for the Revision Officer to consider when valuing the premises in question. The last paragraph of the letter concludes:

> "*Lastly, while acknowledging the conscientiousness and courtesy with which you have approached this matter and which I have already remarked during our telephone conversation, I am somewhat concerned that Valuation Office practice appears to be that you, in your capacity as the initial assessment officer, are effectively now engaged in revising your own decision and I respectfully submit that such practice could infringe well established legal principles of natural justice and the like and accordingly it may be appropriate to list this matter for appeal.*"(emphasis added)

It is appropriate to note that the process of rateable valuation of the premises had not yet concluded at the time this letter was written and indeed the letter was written with the aim of trying to sway in a completely legitimate fashion the Revision Officer in order to persuade him that a lower valuation should be provided on the Valuation Certificate. It is therefore

abundantly clear that the Valuation Certificate had not issued at the stage that this letter was written or received.

The Valuation Certificate was issued on 15th December 2005. It valued the premises at €41. It was sent by post on that date to the Appellant.

However, there were significant delays in the Christmas post that year. As a result this Certificate did not arrive at the Appellant's premises until the 23rd December 2005. This was a Friday and was of course the last Friday before Christmas.

Unfortunately the Appellant's office had closed for Christmas holidays on 22nd December 2005. It re-opened on 3rd January 2006. The Appellant however himself was not present on the re-opening day as he was absent on a family vacation. No criticism whatsoever is made of the Appellant in this regard nor could there be any such criticism legitimately made. The Appellant's office staff looked after the office and dealt with the Appellant's practice in his absence. However the Appellant is what is sometimes described as a "*one-man practice*" and it would not have been reasonable or fair to expect his secretarial staff to appreciate the significance of the Valuation Certificate or the requirement to appeal within a certain time period.

The Appellant returned to his office on the 23rd January 2006. Having read the Valuation Certificate and accompanying documentation for the first time on that date he set about appealing the Valuation Certificate and organised that the appropriate appeal notification be delivered by hand to the Valuation Office on the 30th January 2006. However the Appeals Manager of Respondent indicated on the 21st February that the appeal application was not received within 40 days of the issue of the Valuation Certificate in accordance with Section 30 of the Valuation Act, 2001 and therefore the appeal could not be accepted. The Appellant wrote to the Appeals Manager on the 6th March 2006 requesting that the appeal be admitted in the particular circumstances; however by reply dated the 6th March the Appeals Manager refused to consider the appeal. Accordingly, the Appellant appealed to the Tribunal on 16th March 2006. In his appeal he has asked the Tribunal to treat the refusal to admit the appeal by the Commissioner as in effect a disallowal of the appeal and in effect the upholding of the Valuation Certificate originally issued. The Appellant also asked that the Tribunal allow the appeal on various legal grounds.

**The Appellant's Case**

On behalf of the Appellant Mr. Liam Stafford BL drew the Tribunal's attention to a variety of cases. He pointed to cases such as **K.S.K. Enterprises Ltd. v An Bord Pleanála [1994] 2 IR 128** and **Proctor & Gamble Company v The Controller of Patents, Designs and Trade Marks [2003] 2 IR 580**. In those cases the statutory time limits fixed were deemed to be mandatory because in his submission there was a considerable need for certainty not just in relation to the position as between the parties but also for the public generally; no such requirement for certainty arises in the instant case. He pointed to other cases such as **Irish Refining Company plc v Commissioner of Valuation [1990] 1 IR 568** in which the time limit for the referring of a case stated was deemed to be directory rather than mandatory. He also drew our attention to **Cox v Commissioner of Valuation 104 ILTR at page 41** and a Northern Ireland case called **McKinney (Inspector of Taxes) v Hagans Caravans (Manufacturing) Ltd. [1997] NI 111**. In addition, we were referred to the well-known decision of **Eire Continental Trading Company, Ltd. v Clonmel Foods, Ltd. [1955] IR 170** which sets out the grounds upon which the Court can extend the time for liberty to appeal from an Order of the High Court where the time fixed by the Rules of the Superior Courts had expired.

Mr. Stafford also referred to the submissions made on behalf of the Appellant in the case of **VA02/1/034 - Cork City Council –v- Commissioner of Valuation and McDonalds Restaurants of Ireland Ltd.** ("**McDonalds**"). While the division of the Tribunal in that case had indicated that the "*very strict statutory timetable*" provided for in the Act meant that the Tribunal did not have a discretion to extend the time for appeal, in his view this was a case which was distinguishable from the instant one. In **McDonalds** an injustice would have been done to an innocent Third Party whereas this does not arise in the instant case. Also in **McDonalds** a letter appears to have been sent out by the parties other than **McDonalds** setting out a specific time for appeal rather than the actual time for appeal which gave rise to the issue of estoppel.

Mr. Staffford conceded that while the statute did not provide any express jurisdiction to extend time it would be open to the Tribunal to interpret the time limit fixed as being directory rather than mandatory.

Mr. Stafford also submitted that as a matter of basic fairness it would be unjust not to allow the appeal. The Respondent had been notified in advance of the clear intention of the Appellant to appeal by virtue of the letter of the 6th December 2005. The Respondent had the option of emailing and/or faxing a copy of the Valuation Certificate or notification that it had issued. In his submission it was not unreasonable to suggest that notification could have been made in that way. He contended that whereas no prejudice would occur to the Valuation Office significant prejudice would occur to the Appellant if the appeal were not heard.

In dealing with the issue of whether or not there was an appeal from an allowal or disallowal by the Commissioner actually before the Tribunal he submitted that the Tribunal should distinguish **VA88/0/364 - Henkel Limited v Commissioner of Valuation** from the instant case. In the **Henkel** case the Tribunal's jurisdiction had been invoked only to later be withdrawn. In any event he submitted that the Tribunal was not bound by previous decisions in accordance with a rigid doctrine of *stare decisis.*

**The Respondent's Case**

On behalf of the Respondent Mr. Brendan Conway BL referred us to the **McDonalds** decision and **Henkel** decision referred to above. In his submission the Appellant had an obligation to "*within 40 days from the relevant date"* appeal in writing to the Commissioner. According to Section 30(2)(b) the "*relevant date*" is "*the date of issue under section 28(6) of a valuation certificate in relation to the property*". Section 28(6) provides that "*If a revision officer exercises, in relation to the property concerned, any of the powers under subparagraph (i) or (iii) of paragraph (a), or paragraph (b) of subsection (4), he or she shall issue to the occupier of that property and to the rating authority in whose area the property is situate a new valuation certificate or, as the case may be, a valuation certificate in relation to the property*". (emphasis added)

There was some discussion over the meaning of the words "*issue to the occupier*". If the relevant date is the date of issue to the occupier, does the section therefore mean that time only runs from the date on which the occupier received the actual certificate? Mr. Conway submitted that "*issue to the occupier*" means in this context "*send to the occupier*" rather than "*serve on*" the occupier. *A fortiori* "*issued to*" cannot possibly mean "*received by the occupier"*.

Mr. Conway submitted that the 40 day period would have expired in any event on the 23rd or perhaps on a benign interpretation, the 24th January (the 24th January being a Tuesday). Therefore the Appellant would have had an opportunity on the 23rd January to furnish a Notice of Appeal on that date. On this basis it might be said that the Appellant could have served his Notice of Appeal within the 40 day period.

Mr. Conway accepted that the Certificate in question had been "*issued to the occupier*" in the instant case by placing the document in question in the post. In his view this was a method that had been utilised for 150 years. There was no reason or obligation to notify by fax and/or email and compliance with the Act in his view was achieved by issuing the document in the manner in which it was issued. He relied on **McDonalds** and contended that the same restrictions in relation to statutory time limits were to be observed in the instant case. He also relied on **Henkel** as authority for the proposition that there was in fact no appeal before us because there had been no determination by the Commissioner.

By way of response on behalf of the Appellant Mr. Stafford submitted that no method of notification is prescribed in the statute; certainly there is no reference to the date of postage as being the appropriate date at which time begins to run. If Section 28(6) was to be interpreted as the starting time running only from the date of receipt then the appeal is comfortably within time. He also queried the suggestion that the appeal would have been accepted if it had been made on e.g. the 24th January.

**The Law**

The first issue to be decided is whether or not what is before the Tribunal is an appeal from a decision of the Commissioner. It is clear that the jurisdiction of the Tribunal arises from Section 34 of the Act which allows an Appellant to appeal to the Tribunal "*against a decision of the Commissioner to allow or disallow an appeal*". Section 33 of the 2001 Act reads as follows:

> "*(33) - (1) In this section "the appeal" means an appeal made to the Commissioner under section 30.*
>
> *(2) 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- ....."*

The submission made by the Respondent is that the appeal had not been validly brought under Section 30 (in that it had not been made in time). It is therefore suggested that the Commissioner simply refused to accept the purported appeal because it had not been received in time and the Commissioner did not have jurisdiction to consider an appeal which had not been made in time. As a consequence it is argued that because the Commissioner did not have jurisdiction to hear the appeal and/or did not exercise in any event that jurisdiction, there is no basis for an appeal to the Tribunal from that refusal to entertain an appeal.

While for reasons which are set out below it is unnecessary for us to determine this issue, there is much force in the argument made by Mr. Stafford that a person whose appeal the Commissioner refuses to entertain is in a similar position to a person whose appeal is disallowed. Certainly in both cases the net effect is the same: the appeal is refused. The difference is of course that in one case the Commissioner does not even consider the various merits and demerits of the case, whereas in the other instance there is at least a consideration of the case before a decision to "*disallow*" the appeal is made. For the reasons set out below we will reserve our position on this matter for another day but there is considerable merit in the point made by Mr. Stafford in this regard.

However, it appears to us that even if we were to entertain the appeal against an appellate "*decision*" of the Commissioner, the effect of our so doing would be to extend the time provided by statute within which that original appeal to the Commissioner should have been lodged. The time limit of 40 days is somewhat generous. Further, it is a statutory provision rather than a provision set out in a regulation in contrast to e.g. time limits set out in the Rules of the Superior Courts. Section 30 in fixing the 40 day period gives no power to the Commissioner or indeed to the Tribunal to extend the time within which an appeal of the sort described may be made. This may appear harsh in the circumstances (as we have observed on other occasions in respect of a similar section of the Act) but it is undoubtedly the case that it represents the statutory position.

While it seems to us that the time limit is unambiguous and incapable of extension the phraseology of Section 28(6) is less clear, particularly in the use of the phrase "*issue to the occupier of that property … a new valuation certificate"*. This raises in turn the issue which the Appellant contends is at the heart of this case – how can time for the making of an appeal run against an Appellant in respect of a document from the date of the issue of the document if the potential Appellant does not know of the existence of the document within the relevant time period?

In our view Mr. Conway is correct in his contention that the phrase "*issue to the occupier"* is akin to "*send to the occupier"* rather than "*serve on the occupier*".

On the date on which the Valuation Certificate is sent to the Appellant the Respondent parts with control or power over the Valuation Certificate in question. While the use of the phrase "*to the occupier*" might on one view suggest service on the occupier, the legislature did not provide that time begins to run only from the date of service on the occupier; or, to put it another way, receipt of the Valuation Certificate by the occupier.

We are of the view that the legislature could have provided for a receipt rule or indeed a service rule but did not do so. In providing that time would run not from the date of service or receipt but from the date of the issuing of the Valuation Certificate the Act creates a situation where a potential Appellant may not be aware that time has started to run against him until very late in the relevant period or indeed may not become aware until the period in question has expired. We note the contention that this did not occur here as technically the 40 day limit did not expire until at earliest close of business on the 23rd January 2006 which was a day on which the Appellant was in his office and would have had an opportunity to examine the Valuation Certificate in question and appeal therefrom.

As we have commented before, the Act gives no discretion to the Tribunal to extend the time for such an appeal. On one view the Commissioner had not jurisdiction or authority to extend the time when the matter came before him under Section 30.

However, this is a somewhat unsatisfactory state of affairs. The Respondent is in a position where it controls the date of issue of the Valuation Certificate. Given that the time limit must be observed strictly we are of the view that it is incumbent on the Respondent to do all in its

power to notify potential Appellants of the fact of the issuing of a Valuation Certificate in circumstances such as these. The Respondent contends that there is no section in the Act requiring it to notify any party on any particular matter. This is undoubtedly true. However the Act does not provide for notification by posting as being an exclusive method of notification.

In our view the Respondent in correct in law in arguing that it issued the Certificate in question on the 15th December 2005 by on that date putting a letter in the post enclosing the Valuation Certificate to the Appellant. That being so, it is our view that the time under Section 30 runs from the 15th December 2005 and for the reasons outlined above cannot be extended no matter how harsh or unjust that may appear to be.

However, we would vigorously recommend to the Commissioner that it takes steps immediately to update its notification procedure so that persons in the position of the Appellant are not wholly and exclusively relying on the vagaries of the postal service in order to become aware that the time for the making of a statutory appeal has commenced. In particular we would recommend that the Commissioner of Valuation takes steps to notify future relevant Appellants on the same day that the Valuation Certificate is issued by fax and by email wherever this is reasonably possible. This however is only a recommendation by this Tribunal and cannot form part of the decision of the Tribunal in relation to the issue raised.

Therefore for the reasons set out above the Tribunal refuses the appeal of the Appellant herein.

**DECISION:**

The Tribunal hereby refuses the appeal brought by the Appellant herein.