

Appeal No. VA08/5/017 & 018

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

Coolmine Leisure Ltd. (VA08/5/017)

&

Dr. Linda Hamilton and Dr. Liam Lynch (VA08/5/018)

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2170891, Equestrian Centre at Coolmine, Saggart (VA08/5/017), & Property No. 407629, Surgery (House), at 3 Orchard Lane, Clondalkin (VA08/5/018), County Dublin

B E F O R E

John O'Donnell - Senior Counsel

Chairperson

John Kerr - BBS. ASCS. MRICS. FIAVI.

Deputy Chairperson

Brian Larkin - Barrister

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF SEPTEMBER, 2008

By Notices of Appeal dated the 22nd day of June, 2008, the appellants appealed against the determination of the Commissioner of Valuation in fixing valuations of €1,700.00 and €45,900.00 respectively on the above described relevant properties.

Amongst the grounds on which the appellants seek to rely is that the Commissioner did not comply with Section 23 of the Valuation Act, 2001.

The appeal proceeded by way of an oral hearing which took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 12th September, 2008. Mr. Proinsias Ó Maolchalain, BL, instructed by Becker Tansey & Co. Solicitors appeared on behalf of the Appellants and Mr. James Devlin, BL, instructed by the Chief State Solicitor appeared on behalf of the Respondent. Mr. Eamonn Halpin, BSc (Surveying), ASCS, MRICS, MIAVI, and Mr. Frank O'Connor, ASCS, MIAVI, a Valuer with the Valuation Office, also attended.

INTRODUCTION

The Appellants contend that the Respondent has failed to comply with the obligations imposed on him by virtue of Section 23 of the Valuation Act, 2001. In brief what is alleged on behalf of the Appellants is that the Respondent purported to discharge his obligation to publish a Valuation List by making certain information available on a website. The Appellants contend that the manner in which the website in question was set up made it difficult to extract information on properties. Specifically the Appellants contend that it is not possible to obtain details of every property on the List. In particular it is contended that it is not possible for rate payers or their advisors to obtain information on comparable properties in a similar area for the purpose of making submissions to the Respondent on first appeal (or the Tribunal on a subsequent appeal).

The Appellants submit that the failure by the Respondent to comply with the provisions of Section 23 means that the Appellants have been denied fair procedures in that they have been denied access to relevant information which would or may have assisted persons in the position of the Appellants (and their advisors) in advising the Appellants on the rateable valuation of their own properties.

The Appellants thus seek Orders from the Tribunal. Their submissions make it clear that the Appellants request the Tribunal to set aside the decisions of the Respondent's Appeal Officer (in relation to the quantum of valuation on the Appellants' properties) on the grounds that the denial to the Appellants of the relevant information contained in the Valuation List means that the process of valuation has been carried out in an improper and unfair manner and in particular in breach of the entitlement of the Appellants to fair procedures in relation to the carrying out of the valuation in question. The Appellants also seek an Order from the Tribunal directing the Respondent to comply with its obligation under Section 23 of the

Valuation Act to publish the Valuation List together with details of any amendment to the list on appeal.

A preliminary objection is made by the Commissioner of Valuation in relation to this hearing. The Commissioner of Valuation contends that the Valuation Tribunal has no jurisdiction to make the kind of Orders sought by the Appellants. The Respondent submits that the powers of the Tribunal on appeal are specified in Section 37(1) of the Valuation Act, 2001. The Commissioner contends that the Valuation Tribunal is a creature of statute with limited jurisdiction. Its powers in jurisdiction are to be found only in the statute creating it; apart from its own inherent power to regulate its own proceedings it has no other inherent jurisdiction. In this regard it differs substantially from the High Court and Supreme Court.

Written and oral submissions were received by the Tribunal on behalf of the Appellants from Proinsias Ó Maolchlain, and on behalf of the Respondent from James Devlin, BL.

On behalf of the Appellants Mr. Ó Maolchlain submitted that the comments made by the Tribunal in the previous decision in **VA05/3/054 - Pfizer Ireland Pharmaceuticals** (3rd November 2005) were *obiter* as findings were made. We were also referred to **VA05/2/028 – Rathbeale Service Station Ltd.** in which the Tribunal decided that it was not satisfied that Section 29(3) of the Valuation Act, 2001 had been complied with by the Revision Officer and accordingly the Tribunal determined the valuation to be a nullity and the rate at the foot of the valuation to be a nullity and therefore the rate to be struck out. Mr. Ó Maolchlain suggested that the Tribunal frequently determines that the first appeal is a nullity and makes Orders consequent on such a finding. He submitted that the Tribunal was obliged to consider whether or not the first appeal decision had been validly made and been made in accordance with the Act and had been made within jurisdiction. He submitted that it was a condition precedent of any Tribunal exercising its jurisdiction that a valid decision is before it to consider in the first place. Here, he submitted, no valid decision was before the Tribunal at first instance because the non-publication of the List rendered the decision null and void for want of fair procedure.

Mr. Ó Maolchlain also made the point that even had the Appellants wished to go to the High Court they could not have done so without first exhausting internal remedies. Finally he submitted that it was appropriate as a matter of public policy to determine matters of this

nature before the Tribunal rather than in the High Court for reasons of expense, speed and convenience.

On behalf of the Respondent Mr. Devlin made it clear that the Tribunal was confined in what it could do through the powers given to it by virtue of Section 37 of the Act. The Tribunal does not have the inherent jurisdiction which was suggested; to insert such an inherent jurisdiction would be an attempt to usurp the powers of the High Court. He noted that it would not be possible even for the Circuit Court to declare a previous hearing a nullity, and in the circumstances this could not be done by the Valuation Tribunal either. While Section 37(1)(b)(ii) allows properties to be excluded from the Valuation List this applies when a property is deemed to be exempt from rates or otherwise non-rateable.

Mr. Devlin also made the point that the issue now before the Tribunal had not been raised at first appeal.

THE LAW

In **Pfizer Ireland** the Appellant in that case contended that the decision of the Appeal Officer was contrary to natural justice and so flawed that the revision process should be struck out and the original valuation restored. A number of cases (including **VA05/2/012 - Lidl**) were referred to. In declining to strike out the decision of the Appeal Officer the Tribunal observed in **Pfizer** that:

...“the previous decisions of the Tribunal do not indicate to us that the Tribunal has a declaratory jurisdiction to declare a previous process and resulting rate a nullity. Indeed we are impressed by the submission... that the appropriate entity in which to seek declaratory relief is the High Court rather than the Valuation Tribunal... the existence or otherwise of a declaratory jurisdiction in the Valuation Tribunal is a matter of considerable uncertainty.”

We note also that the **Rathbeale** determination had previously been indicated to us as being the subject of a case stated application to the High Court.

It seems to us that the Tribunal is a creature of statute and is limited in its jurisdiction to the exercise of the powers granted to it by statute. It does not have an inherent jurisdiction other

than inherent power to regulate its own proceedings. Specifically in our view it does not have the power to grant the reliefs sought in the instant case. It does not have the power to declare the first appeal decisions void and/or of no legal effect by virtue of the alleged failure of the Respondent to comply with the provisions of Section 23. It is of course the case that no concession whatsoever was made that Section 23 had not been complied with on the part of the Respondent but even if it were held that Section 23 had not been complied with, the issue of the appropriate remedy, if any, is a matter of some difficulty. However, the Tribunal is satisfied that even if Section 23 had not been complied with, the Tribunal does not have the power to in some way quash the decision of the Appeal Officer at first appeal for want of fair procedure as so frequently happens in the High Court. The Tribunal is also of the view that it does not have the power to “*direct*” the Respondent to behave in a particular way e.g. to direct him to publish the Valuation List in accordance with the provisions of Section 23 as suggested.

Accordingly the Tribunal does not have jurisdiction to entertain the appeal in question. This does not mean that the Appellants do not have an entitlement to pursue this matter elsewhere. Indeed Counsel on behalf of the Respondent made it clear that in circumstances where the Appellants were to apply to the High Court seeking the reliefs of this sort, the Respondent could not argue that the Appellants were deprived of the right to a High Court hearing in relation to this matter because they had not first exhausted their internal avenues of appeal. Any other basis for opposing any application for judicial review on behalf of the Appellants is of course a matter for the Respondent at the hearing of any such judicial review proceedings.

It is clear that the matter is of some considerable concern to the Appellants and it seems to us that they have brought this novel issue to the attention of the Tribunal for reasons of genuine concern. However, as a matter of statute for the reasons outlined above the Tribunal does not have jurisdiction to grant the relief sought and in the circumstances must decline to hear the appeal.

DETERMINATION

The Tribunal declines to hear the appeal brought on the grounds that it does not have the jurisdiction to grant the reliefs sought.

And the Tribunal so determines.