

Appeal No. VA11/5/026

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

**Cost Plus Sofas Ltd. - Revolution Galleries Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Property No. 2188203, Retail/Warehouse at Unit 8, The Park, Carrickmines, County Dublin.

**B E F O R E**

**Fred Devlin - FCSI, FRICS**

**Deputy Chairperson**

**Michael F Lyng - Valuer**

**Member**

**Veronica Gates - Barrister-at-Law**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 12TH DAY OF DECEMBER, 2011**

By Notice of Appeal dated the 13th day of June, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a valuation of €157,000 on the above described relevant property.

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

This appeal first came before the Tribunal on the 18<sup>th</sup> day of October, 2011 by way of an oral hearing held in the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7. The appellant was represented by Mr. Conor Molloy, FCCA, CPA, BComm (Finance & Accounting), the Commercial Director of the appellant company. Mr. Dean Robinson, BSc (Hons) Surveying, a Valuer in the Valuation Office appeared on behalf of the respondent, the Commissioner of Valuation. Mr. Bruce Cohen a Shareholder, Director and Consultant to the appellant company also gave evidence.

Prior to the commencement of the oral hearing, Mr. Molloy made a written submission to the Tribunal which was copied to the respondent by way of a letter dated the 2<sup>nd</sup> October, 2011, setting forth the appellant's four main objections to the assessment of €457,000 made by the respondent in respect of the property concerned in the following terms:

1. *“The increased Rates assessment for 2011 of the Retail Premises at Unit 8 Carrickmines Retail Park which represents a 47.7% increase on the amount assessed in 2010 (2010 Amount of €52,592 compared with the new 2011 Amount of €77,690),*
2. *The Annual Rate of Valuation at €0.170,*
3. *The €457,000 Premises Valuation, and*
4. *The deemed Valuation Date of September 2005 used by DLR for 2011 Rates Assessment purposes.”*

Mr. Molloy also furnished the Tribunal with a photocopy of the unstamped lease dated the 22<sup>nd</sup> May, 2009 under which the property concerned is occupied.

The written submission made by Mr. Molloy went on to deal with the four issues raised by him as set out above.

Having taken the oath Mr. Molloy elaborated on his written submission and expressed the view that in his opinion the proper valuation of the property concerned was in the order of 50% of the assessment made by the Valuation Office. He also expressed the view that the level of rates payable as a result of the valuation of €457,000 from a business point of view was unsustainable and if not reduced could lead to the appellant vacating the premises thus leading to a loss of employment and a loss of rates income to the local authority. Mr. Molloy said he had discussed the valuation with a rating consultant whose advice was that an appeal would most likely be unsuccessful.

Mr. Cohen, in his sworn evidence, expressed similar concerns about the level of rates payable in respect of the subject property and its impact on the business. Mr. Cohen acknowledged that under rating law the valuation had been determined by reference to 2005 rental values and made the point that current rental values were considerably less. Mr. Cohen said that as a direct result of the valuation the rates payable for the year 2005 were approximately 48% higher than the previous year. In his opinion the valuation of the property concerned should be such as would give rise to an uplift of 5%. This, he said, would be in line with what happens in the real world.

At this juncture the Tribunal outlined to Mr. Cohen and Mr. Molloy the basis of valuation for rating purposes and that the relevant valuation date was 30<sup>th</sup> September, 2005. The Tribunal also pointed out that it was a fact that current rental levels bore no comparison to those payable in 2005, but that itself was not relevant in the determination of the net annual value as part of the revaluation programme. The Valuation Office and indeed the Tribunal was bound by the provisions of the Valuation Act and had to determine therefore the valuation of the property concerned in accordance with Section 48 of the Valuation Act, 2001. The Tribunal suggested to Mr. Cohen that it might be helpful to all concerned if he were to seek an adjournment in order to enable him to seek professional advice in relation to rating law and practice and in particular the basis of the assessment of €457,000 made by the respondent.

In response, Mr. Cohen formally sought an adjournment which the Tribunal granted and set down 10:00am on the 16<sup>th</sup> November, 2011 in the offices of the Tribunal as being the time and place for the resumed hearing. It was explained to Mr. Molloy and Mr. Cohen that the Tribunal would be prepared to accept any additional submissions they might wish to make on or before the 2<sup>nd</sup> November, 2011 and that Mr. Robinson could if he so wished be permitted to lodge a response to that submission.

### **The Resumed Hearing**

On the 16<sup>th</sup> day of November, 2011 the hearing resumed and once again the appellant and respondent were represented by Mr. Molloy and Mr. Robinson respectively.

By way of a letter dated 2<sup>nd</sup> November, 2011, Mr. Molloy lodged a further submission to the Tribunal a copy of which was made available to Mr. Robinson. In his written submission Mr. Molloy made the following additional comments:

*“...Further to our attendance at the Tribunal Hearing on the 18<sup>th</sup> October, kindly note we continue to question and dispute the valuation of €457,000 for the reasons detailed below:*

- 1. The increased Rates assessment for 2011 represents a 47.7% increase on the amount assessed in 2010 (2010 Amount of €52,592 compared with the new 2011 increased Rates amount of €77,690),*
- 2. The deemed Valuation Date of September 2005 used by DLR for 2011 Rates Assessment purposes reflects no relevance whatsoever to Current market valuations and the difficulties encountered by Retail trading Sector in Ireland, our Company's turnover levels at Carrickmines and our inability to pay a rates bill of €77,690 per annum. Please note our annual rent amounts to €200,000 on this Retail Unit and the Proposed Rates amount will amount to a whopping 38.9% of our annual Lease Costs.*
- 3. Comparable Valuations in respect of similar Retails units within close proximity to our Location at Carrickmines demonstrate that the Valuation using €340 per sq. metre for the Ground Floor is excessive and inconsistent with the following premises:*

*Ballybrack Retail Park €120 per sq. metre (Tesco – Rear Store)*

*Ballybrack Retail Park €200 per sq. metre (Tesco – Anchor Tenant)*

*Deansgrange Retail €220 per sq. metre (Lidl being the most expensive Valuation)*

*Carrickmines Retail Park €262 per sq. metre (Furniture Retailer)*

*Carrickmines Retail Park €275 per sq. metre (Hardware / Furniture Retailer)*

*Cost Plus Retail Unit (Unit 8) €340 per sq. metre (Furniture Retailer)*

*Based on the above comparative valuation of €120 per Square Metre and the total Unit area of 1661.79 sqm (incl. the Mezzanine Floor) – we estimate the valuation based on these valuations at €159,950.*

*Based on the above higher comparative valuation of €200 per Square Metre and the total Unit area of 1661.79 sqm (incl. the Mezzanine Floor) - we estimate the valuation based on these valuations at €332,358.*

*Please note that the above Valuations for Carrickmines as used by the Valuation Office do not take account of the 3-6 months **Rent Free Periods** applicable in September 2005 in Carrickmines to the above Leases which further reduces these valuations by c. 25% to 50% as of September 2005.*

*Therefore at €120 per sq. – the €159,950 Valuation should be further reduced by between 25% to 50% to a Valuation Range of c.€119,962.50 to €79,975.00.*

*At €200 per sq. metre – the €332,358 Valuation should be reduced by between 25% to 50% to a Valuation Range of c.€249,268.50 to €166,179.00.*

- 4. Ballybrack Retail Park – based on the €120 per sq. metre Valuation at Ballybrack Retail Park which is a long established Retail Park which has O’Briens, a Pharmacy [sic], Tesco, Xtravision, etc – all located within close proximity (approx. 4kms & 7 minutes by car) to the Park in Carrickmines we estimate the valuation of our unit at the Park to be no more than €159,950. Tesco is also partially valued at €200 per sq. metre.*
- 5. Deansgrange Retail – based on the slightly higher figure of €220 per sq. metre Valuation at Deansgrange Retail location (Lidl) which is a long established and very busy Retail location also housing Lidl, Grange Motors, Pharmacy, Newsagent/Post Office, Supervalu [sic], etc – all located again within close proximity to the Park in Carrickmines we estimate the valuation of our unit at the Park to be no more than €292,480.*
- 6. Please note due to the Bank Holiday this week and the tight deadline with regard to this submission – we do not yet have the Valuation Comparables for the Ballyogan retail Park adjoining Carrickmines Retail Park but we expect to have this information in the next day or two. This we expect to be materially lower to the Valuations per sq. Metre used by the Valuation Office with respect to Carrickmines.”*

Attached to Mr Molloy’s letter was a photocopy of a letter from Mr. Declan Bagnall, Chartered Surveyor of Bagnall + Associates setting forth details of the following three properties which he considered to be relevant comparisons for the purposes of this appeal.

1. *Tesco in Ballybrack Shopping Centre*

*Ground floor retail: 3571 sqm @ €200 psqm*

*Rear Store of 185 sqm @ €120 psqm*

*7% added for fit out and €10,000 added for Off-licence*

2. *Lidl in Deansgrange*

*Supermarket 1200.29 sqm @ €220 psqm*

*7% added for fit-out and €10,000 added for Off-licence*

*NAV: €292,000*

3. *Tesco Stillorgan Shopping Centre*

*Ground Floor of 1165 sqm @ €250 psqm*

*1<sup>st</sup> floor of 652 sqm @ €120 psqm*

*7% added for fit-out and €10,000 for off-licence*

Mr. Molloy in his evidence referred to what he described as being “comparable valuations of similar retail units in close proximity to the Carrickmines Retail Park” located within a development known as Ballyogan Retail and Business Park which he was advised had been valued at €128.31 per sq. metre. In oral evidence Mr. Molloy said that the rent payable under the lease dated 22<sup>nd</sup> May, 2009 was reduced from €220,000 per annum to €200,000 in 2010 by agreement with the landlord in the light of lower than anticipated trading levels. Mr. Molloy said the rent agreed with the original occupier in December, 2005 showed how far rental levels had fallen in this development. Mr. Molloy made reference to the rating assessments in respect of the Woodies and Harvey Norman units which he understood were valued at €275 per sq. metre and that, if this was so, then why should the property concerned be valued at €340 per sq. metre. Mr. Molloy said that in his opinion the development at Ballybrack which consisted of a Tesco supermarket and a parade of sixteen/twenty retail units was a vastly superior trading location to Carrickmines and yet the supermarket there was valued at €200 per sq. metre, compared to €340 per sq. metre for the subject property. Mr. Molloy also referred to the Tesco supermarket in Stillorgan, which was similar in size to the subject property and valued at €250 per sq. metre. This supermarket, he said, was located in a long established shopping centre in the midst of an affluent residential area. In regard to

the Lidl premises he acknowledged that this was not truly comparable to Carrickmines as it consists of mainly a supermarket and a bank premises.

Under cross-examination Mr. Molloy agreed that there is only one unit vacant in Phase 1 and Phase 2 of the Carrickmines Park. When asked if it was not a feature that larger retail warehouse premises were let at a lower rate per sq. metre than standard sized units, Mr. Molloy said that in his experience there might be a difference in a purchase situation but not necessarily in a rental situation.

Under further questioning by Mr. Robinson, Mr. Molloy said that the appellant company had twenty three outlets in Ireland but not all of them were located in retail warehouse development schemes. Indeed, the company preferred to occupy a premises with direct access from and frontage to busy main roads. As a general rule, this type of premises traded better than retail warehouses and in this regard Carrickmines was a particularly poor performer from a trading point of view.

Mr. Cohen in a further submission to the Tribunal said that it was difficult for a ratepayer/appellant to further an appeal by virtue of the fact that it was all but impossible to assemble all relevant and necessary information in relation to comparable properties, such as the rents that were being paid and how their rateable valuations had been determined. Mr. Cohen accepted that this information was largely confidential by nature and that the absence of any statutory register of transactions made an appellant's task difficult. In this regard Mr. Cohen said his comments were not to be interpreted as a criticism of Mr. Robinson who he had found at all times to be helpful and courteous.

Mr. Cohen said he had considerable experience in business over many years and in his judgment The Park at Carrickmines was not a good retailing location. This opinion, he said, was well supported by the trading figures of the subject property for the year 2010 submitted to the Tribunal. Mr. Cohen said that whilst his company had stores in several retail warehouse developments throughout the country, their preferred location was on a main roadway in close proximity to a supermarket. The Park Carrickmines did not fall into that category.

### **The Respondent's Evidence**

Mr. Robinson having taken the oath adopted his written précis and valuation, which had previously been received by the Tribunal and the appellant as being his evidence-in-chief. In his evidence Mr. Robinson described in some detail the location of "The Park, Carrickmines" development and outlined how it had been developed in two phases between 2005 and 2007. Mr. Robinson also described the subject property as being a typical, mid-terrace, retail warehouse building, constructed to a high standard of construction and finish. The accommodation measured on a gross internal area basis is as follows:

Ground floor retail – 1188 sq. metres

Mezzanine retail – 409.2 sq. metres

Mezzanine stores – 64.59 sq. metres

The above areas, he said, were accepted by the appellant for valuation purposes.

Mr. Robinson said that the subject property was valued as part of the revaluation of all relevant property in the Dun Laoghaire Rathdown local authority area under the Valuation Act, 2001. Mr. Robinson said that the specified valuation date by reference to which all valuations must be made was the 30<sup>th</sup> September, 2005. In arriving at the appropriate level of values for the various units in The Park, the Valuation Office had carried out an analysis of all open market rents being paid in The Park and elsewhere in the Dun Laoghaire Rathdown local authority area. Having carried out this exercise, the net annual value of the property concerned was initially assessed at €462,000, which figure was reduced to €457,000, following consideration of representations made by Mr. Declan Bagnall of Bagnall + Associates. In due course, the appellant lodged an appeal against this revised assessment to the Commissioner of Valuation under Section 30 of the Valuation Act, 2001. The Commissioner, having considered the appeal, affirmed the valuation of €457,000 and it is against this decision by the Commissioner that the appeal to this Tribunal lies.

Mr. Robinson said that the valuation of €457,000 was calculated on the following basis:

Ground floor retail	1,188 sq. metres @ €340 per sq. metre =	€403,920
Mezzanine retail	409.2 sq. metres @ €120 per sq. metre =	€49,104
Mezzanine store	64.9 sq. metres @ €70 per sq. metre =	€4,543
Net annual value, say		€457,000

In support of his estimate of net annual value, Mr. Robinson introduced three comparisons details of which are contained in Appendix 2 attached to this judgment.

Under examination Mr. Robinson confirmed that the Harvey Norman and Woodies units had been valued at €85 and €75 per sq. metre respectively. Mr. Robinson pointed out that both of these units were considerably larger than the property concerned and that it would be in line with established valuation practice to value such units at a lower rate per sq. metre than a unit the size of the subject property. Mr. Robinson said that he understood the valuation of the Harvey Norman unit was under appeal to this Tribunal and that to date no decision had been issued. Mr. Robinson said that the valuation of the unit concerned would have been determined having regard to the rent passing, taking into account any added rental value attributable to the fit out work carried out by the tenants.

When asked about the valuation of Unit 5, (formerly occupied by Classic Furnishings) Mr. Robinson said he did not have this information immediately to hand, but undertook to furnish to the appellant and the Tribunal all information related thereto as soon as possible. When questioned about the valuation of Unit 9, Mr. Robinson said that this unit had a gross internal area of about 1800 sq. metres and was valued at €310 per sq. metre, which figure he said reflected the size of the unit. The valuation of this unit, Mr. Robinson said, was well supported by the passing rent.

Mr. Robinson was also asked about the valuation of various units in Ballyogan Retail and Business Park referred to in Mr. Molloy's evidence. Mr. Robinson said he did not have any information in relation to these units to hand nor had he been aware that they would be raised by Mr. Molloy. Nonetheless, Mr. Robinson said that, in his opinion, they were not valid comparisons in as much as the Ballyogan development was not a retail park development in the accepted sense of the word. Mr. Robinson said he would make available to the appellant and the Tribunal details of how the units in this development were assessed.

**Note:** On the 23<sup>rd</sup> November, Mr. Robinson furnished to the Tribunal and the appellant information in relation to the valuation of Unit 5 (Classic Furnishings Unit) and three units in Ballyogan Business Park. Details of these additional comparisons are also contained in Appendix 3.

## Findings

The Tribunal has carefully considered all the evidence introduced and submissions made by the parties and finds as follows:

1. The property concerned was valued as part of the revaluation of each relevant property in the Dun Laoghaire Rathdown rating authority area in accordance with Section 19 of the Valuation Act, 2001. The specified valuation date, as provided for under Section 20 of the Act, by which the value of each property is to be assessed is 30<sup>th</sup> September, 2005. The valuation of each property is to be made in accordance with Section 48 of the Valuation Act, 2001 which provides as follows:

*(1) The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value.*

*(2) Subsection (1) is without prejudice to section 49.*

*(3) Subject to section 50, for the purposes of this Act, “net annual value” means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year, on the assumption that the probable average annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes and charges (if any) payable by or under any enactment in respect of the property, are borne by the tenant.*

2. The Park, Carrickmines, is typical of many retail parks to be found in several suburban locations in the greater Dublin area and elsewhere throughout the country. The Park development was built in two main phases and is anchored by two well known and well established traders namely, Woodies and Harvey Normans. A number of other units, somewhat similar in size to the property concerned, are occupied by Smyth’s Toys, Halfords and other well known local traders. It would appear that there are no vacant units in Phase 1 of the development and possibly one vacant unit in Phase 2. The presence of well known traders, such as those mentioned above, in a retail warehouse scheme is usually indicative of its merits from a locational point of view.

3. It is common case that current rental values are considerably lower than they were in 2005. It is also common case that the property concerned was initially let on a FRI basis in December, 2005 at an initial yearly rent of €447,000 and is now occupied at a rent of €200,000 per annum. An examination of rental evidence would seem to support that the rent agreed in 2005 was in line with prevailing rental levels for other units in the development at or about the relevant valuation date. The Tribunal also finds as a matter of fact that the rental values and rateable valuations of larger than standard sized units are usually assessed at a lower rate per sq. metre.
4. It is clear from the appellant's submissions and evidence that their main cause of concern is that as a direct result of the revaluation process their rates bill was increased from €2,592 in 2010 to €7,690 in 2011 – an uplift of 47.7%. The appellant contends that this level of uplift could render their business at this location no longer viable and that if the company were to cease trading, this would have the effect of a loss of employment in the area and a loss of rates income to the rating authority.
5. The Tribunal is not unaware of the difficulties encountered by retailers throughout the country at this time of economic and financial stringency. Nevertheless, the only function of this Tribunal is to determine whether or not the valuation of the property concerned as determined by the Commissioner is fair and has been carried out in accordance with the statutory provisions contained in Section 48 of the Valuation Act, 2001.
6. It is inevitable that a revaluation carried out in accordance with Section 19 will give rise to a realignment of relative values of property in the rating authority area concerned. This realignment of relative values will occur, not just between the different categories of property, but between properties in the same category or mode of use. Indeed, the very purpose of periodic revaluations is to ensure that equity exists between ratepayers and in so far as it is possible to achieve the compilation of a valuation list whereby each ratepayer pays his/her proper proportion of the total rates bill for the rating authority area concerned. In any such realignment of values, some ratepayers will find that their rates liability increases whilst others may obtain a reduction. This realignment of values can give rise to situations – such as has

occurred in this instance – where the uplift in rates liability can cause financial difficulties to the ratepayers. Equally, some ratepayers may appear to benefit unduly. In the circumstances, perhaps it would be timely for the Oireachtas to give consideration to the introduction of a rates equalisation scheme, whereby increases/decreases of rates liability in excess of say 10%/15% could be phased in over a period of years. (Such an arrangement operates in other jurisdictions which share a common rating valuation system to Ireland's.) In this regard, perhaps it should also be borne in mind that the revaluation of all relevant property in the Dublin City Council area is currently under way and it is intended that the new valuation list will become effective from 1<sup>st</sup> January, 2013.

7. In relation to the property concerned and having examined all of the evidence introduced by both parties – some of which was of limited assistance – the Tribunal has come to the conclusion that the valuation determined by the Commissioner of Valuation in relation to the property concerned is fair and reasonable and made in accordance with the statutory provisions contained in the relevant sections of the Valuation Act, 2001.

### **Determination**

The Tribunal determines that the valuation of €457,000 be left unaltered.

And the Tribunal so determines.