Appeal No. VA92/3/023

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Jean Cooney t/a Rendezvous Coffee Shop **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Shop & Store at Lot No. 109a.110ab.111ab. Unit 5 & 6 Main Street South, E.D. Wexford No. 2 Urban, U.D. Wexford, Co. Wexford
Agreement at First Appeal

B E F O R E

Paul Butler	**S.C. (Acting Chairman)**
Mary Devins	**Solicitor**
Brian O'Farrell	**Valuer**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF JANUARY, 1993

By notice of appeal dated the 26th day of May, 1992, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £40 on the above described hereditament.

No grounds of appeal were stated in the Notice of Appeal.

The Property:

The property comprises a coffee shop at ground floor level with ancillary accommodation at first floor level. It is situated within a development known as "Lowneys Mall" which is a recently developed retail mall off South Main Street, Wexford. The property which formerly comprised two retail units has a frontage of some 28 feet to the mall.

The Title:

The property was held from J.J.B. & M. Lowney under a 2 year 9 month agreement dated from the 1st June, 1988. This agreement referred only to Unit No. 5. However, it was renegotiated to include Unit No. 6 as and from 1st April, 1990. The combined rent was £7,500 p.a. until the expiry of the agreed term. A revised rent £8,400 per annum was agreed as from 1st March, 1991 for a new term.

Accommodation:

Ground Floor	Coffee Shop	532 sq.ft.
First Floor	Staffroom & storeroom	434 sq.ft.
	2 w.c.'s	
	Frontage to Mall 28 feet.	

Services:

All mains services are connected to the property.

Valuation History:

Following redevelopment the property was first separately assessed in the 1990/1 Revision of valuation as follows:

Unit No. 5	R.V. £27
Unit No. 6	R.V. £30

Following appeal to the Commissioner of Valuation the assessment was reduced to a single R.V. of £40 which is the subject of the present appeal.

Written Submissions:

A written submission was received on the 18th November, 1992 from Ms. Jean Cooney, the appellant. In the written submission it is stated that the unit is leased as a cafe in Lowneys Shopping Mall and that the turnover is severely limited as it is a totally enclosed mall. The entrance is only 5 feet 6 inches wide and is open only during normal shopping hours. This means that the appellant can never utilise prime catering times such as Sundays and Bank Holidays as the people cannot find this cafe when the shops in the mall adjacent to the Main Street are closed. The landlord does not open the mall at these times so there is no lighting. As the catering trade is very much a spur of the moment "drop in for something to eat" business and as the coffee shop trade has a very low turnover, the appellant submits that the rateable valuation should not be as high as other retail business that can command high turnover during normal shopping hours.

A written submission was received on the 19th November, 1992 from Mr. Michael Keogh, a District Valuer with 22 years experience in the Valuation Office on behalf of the respondent. In the written submission Mr. Keogh set out details of the property and the valuation history. Commenting on the appellant's grounds of appeal Mr. Keogh submitted that the reduced single assessment of £40 was agreed following protracted negotiations with Mr. Adrian Haythornthwaite who confirmed the agreement on behalf of both the tenant and the landlord. He drew the attention of the Tribunal to correspondence in the matter and he also drew the Tribunal's attention to two previous cases where it was held that agreements reached following first appeal negotiations are binding on the appellant:-

VA88/266 - Horgan Meats V The Commissioner of Valuation

VA88/373 - Master Credit Limited V The Commissioner of Valuation.

Oral Hearing:

The oral hearing took place in Waterford on the 1st December, 1992. At the outset it was agreed by all parties that this appeal be heard together with that of Patrick A. Kelly t/a Geraldines Flowers (VA/92/3/34) and that of Isobel Lowney t/a Lowney Music Centre (VA/92/3/33) as all three of the subject premises are situated within the same development known as Lowneys Mall off South Main Street in Wexford.

Mr. Michael Keogh represented the Commissioner of Valuation and each of the appellants appeared in person. In the course of the hearing Mr. Adrian Haythornthwaite, Auctioneer and Valuer, was called to give evidence at the request of the Tribunal.

At the outset Mr. Keogh made it clear that the appeal was being contested not only on the basis of quantum but that the Commissioner wished to establish that each of the appellants were estopped from pursuing the appeal on the basis that the valuations had been agreed between Mr. Haythornthwaite on behalf of each of the appellants and Mr. Keogh on behalf of the respondent.

From the evidence it emerged that both Ms. Isabel Lowney and Mr. Patrick Kelly gave their landlord authority to pursue the appeals on their behalf. It further emerged that the negotiation was carried out by Mr. Haythornthwaite with the express authority of the landlord.

From the foregoing the legal principal *delegatus non potest delegare* arises. Under the foregoing maxim an agent may not delegate his authority or appoint a sub-agent to act on behalf of his principal except with the express or implied authority of that principal. The question then arises as to whether the landlord had the implied authority of two of the appellants, namely; Isabel Lowney and Patrick A. Kelly to employ Mr. Haythornthwaite to pursue the appeal on behalf of the appellants and to reach an agreement with the Commissioner's representative to that end.

The Tribunal is satisfied on the evidence of those two appellants that they gave such authority to the landlord and that each of them was aware that the question of settlement would arise between Mr. Haythornthwaite and Mr. Keogh. Mr. Haythornthwaite, therefore, had, at least in so far as the Commissioner's representative was concerned, the authority to act as he did. Whether Mr. Haythornthwaite or, more likely, the landlord should have come back to these appellants for agreement on the particular figures proposed to be settled upon is not a matter for the Commissioner.

The evidence in the subject case differs from that in the cases of Isabel Lowney (VA/92/3/33) and Patrick A. Kelly (VA/92/3/34) in that it is on the clear and uncontroverted evidence of Ms. Cooney that not only did she not give her landlord authority to instruct Mr. Haythornthwaite but that she did not give her landlord authority to act on her behalf. When questioned by the Tribunal on the subject of agreement with the landlord, Ms. Cooney said that she demurred; that she did not agree with the rest of them (the other tenants). She said that she informed the landlord of the fact that she did not agree and that the landlord came to her a few days later and said "Listen, if you don't pay a cheque in now to appeal against the valuation your valuation will stand and you will be rated at that and you can't appeal after that. You need to pay anyway and it will be much simpler if you give me a cheque and all our cheques went in together". Giving her landlord a cheque she made it clear that she did not wish to be represented.

In view of the foregoing the Tribunal finds that neither the landlord nor Mr. Haythornthwaite (through absolutely no fault of his own) had authority to act on behalf of Ms. Cooney and the issue of estoppel does not arise.

On the question of quantum in the subject case the evidence was that there was a passing rent of £8,400 which was fixed at revision as and from the 1st March, 1991. Ms. Cooney argued strongly that she was in a slightly different position to other premises mentioned because she was

obliged under her lease to operate as a catering unit and yet was unable to open at night or on Sundays as would other catering units in the town. She said that the only reason she agreed to the revised rent was because she had invested heavily in putting equipment in to the premises and was, in effect, left with no choice. She thought a reasonable rent for her premises having regard to the restrictive covenant and the fact that she could not open at night or on Sunday was £7,000.

Determination:

In the absence of evidence to the contrary, the Tribunal accepts the evidence of Ms. Cooney and applying a factor of 0.5% (in accordance with the evidence) determines that the rateable valuation should be fixed at £35.