

Appeal No. VA92/3/033

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Isobel Lowney t/a Lowney's Music Centre

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop and Store at Lot No. 109a.110ab.111ab/Unit 10 Lowney's Shopping Centre, Main Street South, E.D. Wexford No. 2 Urban, Urban District of 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 13th day of June, 1992, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £37 on the above described hereditament.

The grounds of appeal were set out in detail in an attachment to the appeal notice which is attached to this judgment at Appendix 1.

The Property:

The property comprises a 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 has a frontage of some 28 feet to the mall.

Title:

The property is held from J.J.B. & M. Lowney under an expired 2 year 9 month agreement dating from the 1st April, 1988. A rent of £5,200 applied from 1988.

Valuation History:

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

Unit No. 10	<u>R.V. £47</u>
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Following the appeal to the Commissioner of Valuation, the assessments was reduced to R.V. £37.00 which is the subject of the present appeal.

Written Submissions:

A written submission was received on the 18th November, 1992 from Mr. Patrick A. Kelly and Ms. Isabel Lowney. In the written submission the appellant set out the grounds for the appeal as follows:-

- 1) There are new rate-free areas at the north end of town which makes their prices more competitive than that of the appellants. Also the fact that the number of businesses paying rates is not commensurate with those receiving benefit, means the rate itself is too high.

- 2) Since the new entry to Crazy Prices opened at the end of the mall, there is now only 40% or less of the traffic coming through the mall. The carpark entrance is now beside Crazy Prices only. Also Crazy Prices run a bus which stops on the Quay again taking more passing trade from the mall.
- 3) As a result of points 1 and 2 above, turnover has been reduced.
- 4) Because of recession all shops have had to reduce prices to make any turnover whatsoever. This makes a payment of any higher taxes not viable.
- 5) The mall has no main street frontage - the greatest source of advertising. The occupants of the mall have public visibility only from 9am to 7pm unlike shops on any street which have full 24 hour advertising.
- 6) There are no carparking facilities in the south end of the mall similar to the north end.
- 7) New businesses need time to establish.
- 8) Wexford is one of the most depressed counties therefore the spending power is weak due to unemployment. Cow & Gate, one of the largest town employers have announced their re-location programme, resulting in job losses.
- 9) Casual traders are selling exactly the same goods at unrealistic prices, making it very difficult to compete with the appellants overheads.

A written submission was received on the 19th November, 1992 from Mr. Michael F. 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 its valuation history.

Commenting on the appellant's grounds of appeal Mr. Keogh stated that the reduced assessment of R.V. £37 took account of the submissions made on behalf of the appellant, and is in line with assessments for comparable Wexford premises of similar function, and whose valuations have been revised within a recent period. He also stated that the points made by the appellant were taken into account in the negotiations with Mr. Haythornthwaite who had acted on behalf of the landlord and tenants at first appeal stage.

Mr. Keogh set out details of the accommodation in the subject property as follows:

Ground Floor	Shop	522 sq.ft.
First Floor	Storeroom	442 sq.ft.
	W.C.	-
	Frontage to Mall	28 ft.

Services: All mains services are connected to the property.

Referring to the valuation history Mr. Keogh stated that the reduced assessment £37 which is the subject of the present appeal was agreed following protracted negotiations with Mr. Adrian Haythornthwaite who had acted as agent for the landlord in relation to the appeals within the shopping centre. Mr. Haythornthwaite had confirmed the agreement on behalf of both the tenants and the landlord and he drew the attention of the Tribunal's correspondence in the matter. Mr. Keogh submitted that the agreements were binding on appellant and drew the attention of the Tribunal to the following precedents:-

VA88/266 - Horgan Meats V The Commissioner of Valuation

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

Mr. Keogh set out details of his calculation of the R.V. of £37 as follows:-

Shop	522 ft ²	@ £12.50	= £6,525
Store	442 ft ²	@ £ 2	= <u>£ 884</u>
			£7,409

Net Annual Value say £7,400

Net Annual Value £7,400 @ .5% = £37.00

R.V. £37

Included in the written submission was a schedule of Wexford properties which are comparable, of similar function and whose rateable valuations have been revised within a recent period.

These are attached as Appendix 2 to the judgment.

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 Jean Cooney t/a Rendezvous Coffee Shop (VA/92/3/23) 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 Tribunal is, therefore, satisfied that the two valuations in question were properly agreed and that the foregoing two appellants, namely; Ms. Isabel Lowney and Mr. Patrick A. Kelly are estopped from denying this.

In view of the foregoing finding the Tribunal finds it unnecessary to make any finding in relation to other arguments about quantum. However, the Tribunal wishes to add that having regard to the findings in the appeal of Ms. Jean Cooney (VA/92/3/23) it is probable that respective valuations would, in any event, have been upheld.

Determination:

The Tribunal therefore determines that, by reason of the agreement above referred to, the appellant in this appeal is estopped from going behind the said agreement and the valuation as fixed by the Commissioner is affirmed.