

Appeal No. VA93/3/006

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

F.M.C. International Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Factory at Map Ref: 2N, Townland: Wallingstown, E.D.: Caherlag, R.D.: Cork Upper, Co. Cork

Quantum - Contractor's basis of valuation

B E F O R E

Henry Abbott

S.C. Chairman

Veronica Gates

Barrister

Paddy Farry

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF DECEMBER, 1994

By Notice of Appeal dated the 26th day of July, 1993 the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £1,500 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that:-

- "(1) The valuation is bad in law.
- (2) The valuation is excessive and inequitable."

The Property:

The property is a food ingredient facility on Little Island. The product made is Cotrad used in the food/baking industry, an extract from two seaweed types viz. Cottoni and Radula which are imported from sea farms in the Philippines and Peru. The property was originally bought as an advance factory from the IDA. around 1980. It was adapted at a cost of £908,700 plus fees and used for the production of Copper Foil by Nippon Denkai. Yates Industry purchased in November, 1983 for £450,000. Production recommenced in the expanded plant in December, 1985. The property was purchased by F.M.C. in 1990 for £545,750 and adapted to its current state at a cost of £1,464,150.

Valuation History:

Prior to 1991 revision the rateable valuation was £1,118 (Building) and £132 (Miscellaneous). The premises was included in the 1991 revision and issued on the fourth quarterly revision in November, 1991 at £1,410 (Buildings) and £240 (Miscellaneous). The revision was appealed to the Commissioner of Valuation and at First Appeal the rateable valuation was reduced as follows: £1,410 (Buildings) reduced to £1,160 (Buildings) R.V. and £240 (Miscellaneous) increased to £340 (Miscellaneous).

Written Submissions:

A written submission was received on the 11th January, 1994 from Mr. Des Killen F.R.I.C.S., I.R.R.V., a Director of Donal O'Buachalla & Company Limited on behalf of the appellant. In his written submission, Mr. Killen said that the matters at issue were the correctness of the rateable valuation and the rateability or otherwise of certain items of plant and machinery contained in the R.V. £340 (Miscellaneous). He described the property and listed in detail the premises contents - buildings and miscellaneous. He set out his calculation of the rateable valuation on (a) an N.A.V./R.V. basis and (b) a cost basis and these are attached as Appendix 1.

A written submission was received on the 13th January, 1994 from Mr. Terence Dineen, B.Agr.Sc, a District Valuer with nineteen years experience in the Valuation Office on behalf of the Respondent. In the written submission, Mr. Dineen set out a description of the property and the history of its development, the alterations carried out in recent years and the valuation history. He set out his calculation of the rateable valuation applicable to the buildings as follows:-

1. Office Block: Ground Floor: 2,604 sq.ft. @ £3.25 = £ 8,643

	First Floor:	4,206 sq.ft. @ £3.25	=	£13,669
Store:	Ground Floor:	2,045 sq.ft. @ £2.25	=	£ 4,601
2. Finished Product Store		4,445 sq.ft. @ £2.25	=	£10,001
3. Laboratory:	First Floor:	2,042 sq.ft. @ £3.25}		
Office:	First Floor:	461 sq.ft. @ £3.25}	=	£ 8,135
Store:	Ground Floor:	3,052 sq.ft. @ £2.00	=	£ 6,104
4. Milling, Blending, Drying:		7,268 sq.ft. @ £4.50	=	£32,706
	Add Grinder Room:}			
	Packing Room:}	753 sq.ft. @ £1.00	=	£ 753
5. Process Area North:	2 Floors:	11,882 sq.ft. @ £2.50	=	£29,705
6. Process Area South:		5,844 sq.ft. @ £3.00	=	£17,532
	Plus Mezzanine:	1,169 sq.ft. @ £2.00	=	£ 2,338
7. Seaweed Storage & Handling:		9,690 sq.ft. @ £3.00	=	£29,070
8. Production:		882 sq.ft. @ £2.25	=	£ 1,984
9. Production:		721 sq.ft. @ £2.25	=	£ 1,622
	Add for 2 Storey Area:	341 sq.ft. @ £1.50	=	£ 511
10. Warehouse:		2,895 sq.ft. @ £2.25	=	£ 6,513
11. Motor control centre:		1,260 sq.ft. @ £3.00	=	£ 3,780
	Office over:	1,260 sq.ft. @ £3.00	=	£ 3,780
12. Switch Rooms:		2,100 sq.ft. @ £2.00	=	£ 420
13. Generator:		185 sq.ft. @ £2.00	=	£ 370
14. Boiler House:		387 sq.ft. @ £2.00	=	£ 774
			=	£182,859
	N.A.V.	£182,859 X		£1,152

$$\begin{array}{rcl}
 0.63\% & & = \\
 \text{SAY} & & \text{£1,160} \\
 & & =
 \end{array}$$

Miscellaneous Items:

The rateable valuation on miscellaneous items was agreed at £240, apart from certain tanks whose rateability was contested.

Following adjournment of the appeal to the 25th and 26th May, 1994, Mr. Killen submitted details at the request of the Tribunal on the process carried on in the process tanks, which is appended to this Judgement at Appendix 2.

Mr. Dineen supplied two additional submissions to the Tribunal. In the first additional submission dated 12th May, 1994, Mr. Dineen set out further details of why the comparable basis, that is a price per square metre method, should be rejected by the Tribunal. He suggested that the fixing of R.V.'s was a two-stage process both of which involved comparisons. He said that this led to a lot of confusion regarding the word comparison as in the I.M.I. case. He said the comparisons can be considered in two stages; stage one to fix a rent/N.A.V. on the subject, stage two to produce a conversion factor or percentage from N.A.V. to R.V..

Mr. Dineen said that when Section 5 of the 1986 Act is considered, stage one and stage two comparisons can both relate to properties comparable and of similar function. However, for stage one comparisons, properties whose valuations have been made or revised within a recent period are not required or necessary, i.e. it is irrelevant regarding those comparisons when the valuations were struck. For example, if in a line of six shops five had rents of £10,000 per annum the sixth similar shop could be said to have a rent of £10,000 despite the fact that it had not been revised since 1880.

In relation to the second stage of the comparisons (ratio applicable) Mr. Dineen argued that as this point was not being argued in these cases, stage two comparisons were irrelevant and therefore, valuations made or revised within a recent period were irrelevant. He said that this was why attempts to relate new N.A.V.'s and R.V.'s to valuations in the lists, not themselves based on N.A.V. evidence, was flawed.

Mr. Dineen then argued as to why the Contractor's Basis should apply.

This additional submission also gave details of the Contractor's Basis of valuation and of the comparison, Cara Partners, Factory at Wallingstown, Cork Upper, which had been adduced by Mr. Dineen in evidence.

Mr. Dineen's second additional submission dated the 13th May, 1994 contained extracts from publications relating to the Contractor's Basis of valuation.

Oral Hearing:

The oral hearing took place in City Hall, Cork on the 19th day of January, 1994 and on the 25th and 26th days of May, 1994 and included an inspection of the premises together with similar premises. VA93/3/005 - F.M.C. International Limited and VA93/3/004 - Henkel Ireland Limited were heard more or less contemporaneously and the inspection of premises and discussion of methods of valuation referable to Capital Cost assisted the determination of the appeals in all cases.

Mr. Des Killen, F.R.I.C.S. F.S.C.S., I.R.R.V. a fellow of the Chartered Surveyors in the Republic Of Ireland and a Director of Donal O'Buachalla & Company Limited with 32 years experience as a Valuer appeared for the appellant and Mr. Terence Dineen, District Valuer with 19 years experience in the Valuation Office appeared for the respondent. Evidence was given along the lines of the precis and the Tribunal had the benefit of inspecting the premises and seeing at first hand the outline of processes carried on there. The Tribunal also heard evidence from Mr. Hegarty, the Engineer of the appellant in relation to the configuration of the four tanks (T113, T114, T115 and T116) described in the plan of the subject annexed to the judgement. Mr. Hegarty at the subsequent hearing produced a technical specification of the process of treatment of seaweed which was mixed with boiling water and chemical substances in these tanks to effect a processing of the seaweed. The technical memorandum produced by Mr. Hegarty is as follows:-

"The extractor vessels T113, T114, T115 and T116 are agitated steam sparged process vessels in which the seaweed plant tissue disintegrate allowing the carrageenan in the cell wall to be released. This glueucose/galactose polymer of kappa carrageenan in the presence of the added alkali - calcium hydroxide - is converted from the galactose 6 sulphate and galactose2,6 disulphate into 3,6 anhydrogalactose or its 2-sulphate. This alkaline treatment producing the 3,6 anhydride alters the conformation of the carrageenan chain, eliminating the kinks

and increasing formation of double helices thereby enhancing the gelling potential."

Mr. Hegarty described the process in the series of tanks as having a collective cascading effect on the mixture of seaweed, water and additives. This agitation has the effect of releasing the carrageenan active ingredient from the seaweed and changing it in the manner described. The end product is a solution/emulsion which enables the carrageenan active ingredient to be extracted. The turnover of the series of tanks is finished within 48 hours, so the storage life of any batch of product or mix in the tanks is relatively short at any one time.

Mr. Dineen pressed the Tribunal to consider Capital Cost based methods of calculating N.A.V. not only in relation to the standard factory floor area but in relation to the item of £340.00 absolute including the tanks which he suggested ought to be valued on an N.A.V. basis having regard to their cost. In particular he referred to the basis upon which pipes and connecting plant of tanks had been treated by agreement between professional valuers and the respondent some years ago using a Capital Value and a Return of 6.5% converted by the 0.63% ratio.

Mr. Dineen further argued on the basis of the *VA88/160 - CaribMolasses Company Limited - v- Commissioner of Valuation* case decided in the Supreme Court that there was no process of change in the tanks. Mr. Dineen relied on the judgement of Blaney J. in the CaribMolasses as follows:-

"The Molasses remains Molasses. What happens is that the different types of molasses instead of forming a mass of irregular composition, are mixed so as to form a homogeneous whole. Secondly, even if there were a process of change induced in the molasses, it is not induced by the tanks. They are simply used to contain the molasses while blending is effected by the molasses being pumped from one tank to the other."

Mr. Dineen argued that the pumps outside the tanks in the subject property effected the change in the seaweed mixture if indeed a change took place. He argued that there was no change, that the carrageenan was merely extracted from the seaweed.

Findings:

(1) The Tribunal consistent with its findings in the *VA92/4/029 -M.F. Kent & Company - v- Commissioner of Valuation* finds that the appropriate percentage ratio of R.V. to N.A.V. is 0.5%.

(2) The Tribunal finds that the approach of the Valuers in relation to value has been correct, reflecting market values which are realistic having regard to the Capital Value of the premises. The letter of the 17th January, 1994 from Donal O' Buachalla & Company Limited to the respondent almost indicates a consensus in relation to the matter.

(3) The Tribunal however, considers that the appellants valuation of the Mezzanine and item 7 of Mr. Dineen's valuation (page 3 above) are more appropriate and having regard to this considers that the total N.A.V. of the buildings ought to be £174,391.

(4) The Tribunal has considered the application of the decision of the Supreme Court in *CaribMolasses* to the facts of this case and finds that there is in fact a process of change carried on within the tanks not only in relation to the desiccation of the seaweed into an emulsion but also in relation to the release in recoverable form of the carrageenan and its alteration in relation to its physical and indeed organic chemistry. The Tribunal has also considered the later decision in *Pfizer Chemical Corporation -v- Commissioner of Valuation* , Judgement of Lavin J. delivered in the High Court on the 20th July, 1994 since the hearing of this appeal which applied the *CaribMolasses* decision and finds there is nothing in that case which would alter the view of the Tribunal. In fact, if there was ever a case in which the question of process of change arose the Tribunal is of the view that few could be more clear than this case.

The Tribunal accepts that in order to qualify the tanks within the schedule in Section 8 not only must there be a process of change but that the tanks must be used primarily to induce the same. In otherwords the primary use of the tanks must not be storage. Having regard to the short turn around of the stock of the tanks within 48 hours the Tribunal has no difficulty in finding that the tanks are indeed used primarily to induce a process of change in the substance contained therein. Accordingly, the Tribunal finds that the tanks are not rateable and decides to exclude the four described herein.

(5) In addition to the four tanks described above, the parties have agreed that another tank inside the premises was incorrectly included in the valuation and this ought to

be excluded as well.

- (6) The Tribunal finds no reason for using rule of thumb calculations to ascertain the N.A.V. of the tanks and consistent with the Act, 1986 finds Mr. Dineen's approach to the valuation of the tanks as reasonable and correct. Accordingly, the Tribunal proposes to deduct a valuation of £55.00 in respect of the valuation of the five tanks concerned leaving the sum of £45.00 relating to the balance of the rateable tanks in accordance with Mr. Dineen's calculations. As Mr. Dineen has been using a fraction of 0.63% this figure ought to be rounded to £35.00.

Having regard to the foregoing the valuation of the subject ought to have the following components and total:-

Valuation of Factory Space	£ 871.00
Agreed Absolute Items	£ 240.00
Balance of Tanks	<u>£ 35.00</u>
Total	£1,146.00

Accordingly, the Tribunal finds the rateable valuation on the subject is £1,146.