

Appeal No. VA96/6/007

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

Bank of Ireland, O'Connell Street, Clonmel

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Bank & yard at Map Reference 77a.77b.78 Clonmel West, O'Connell Street, UD: Clonmel West Urban, Clonmel, Tipperary S.R., Co. Tipperary
Adjournment application - late submission of pressay

B E F O R E

Liam McKechnie - Senior Counsel

Chairman

Barry Smyth - FRICS.FSCS

Member

Michael Coghlan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 23RD DAY OF MARCH, 1998

1. In this appeal Mr. Sanfey on behalf of the Commissioner has made an application for an adjournment on the basis that the submission of the appellant was late and that accordingly the Commissioner, through the appeal valuer, did not have a reasonable opportunity of considering its contents, did not have a reasonable opportunity of looking at the comparisons in any detail and did not have a reasonable opportunity of consulting with Counsel. Therefore, it is claimed by the Commissioner that he is not in a position to deal with this appeal as otherwise he might so do.

2. The background to this application and to this appeal should be noted. In broad terms it is as follows. In the latter part of 1997 a letter was sent to all Agents appearing on behalf of appellants arising out of the 1995 Clonmel revision indicating that submissions in all cases in which they acted should be in by 26th January 1998. In case of those Agents, a further letter, in this case dated the 18th December 1997 was sent to Messrs. Lisney & Company confirming that this appeal would be listed for hearing on the 16th March and confirming that the submissions should be in by the 2nd March at the latest. In this case the submission from Messrs Lisney was received on the 10th March with a submission on behalf of the Commissioner via Mr. Maher (Appeal Valuer) received on the 11th March.
3. Regarding the lateness of Mr. Maher's submission, an issue arose as to why the submission made on behalf of the Commissioner was not received until the 11th of March and on that issue the Tribunal decided to take oral evidence and in the first instance it heard Mr. Maher and then heard Mr. Davenport. We are satisfied that between the 27th February and 6th March of 1998 Mr. Maher had a justifiable impression to put it at its lowest, that no firm or positive decision had been taken by the Bank of Ireland to proceed with this appeal. We are further satisfied beyond question that a meeting apparently took place between agent, counsel and the officials from the Bank of Ireland on the or about 6th March 1998 at which a decision was made to proceed with this appeal and that following such a meeting a telephone conversation took place between Mr. Davenport and Mr. Maher in which Mr. Maher was informed positively that the Bank of Ireland intended to proceed with this appeal. Mr. Maher was not cross examined on his evidence and we do not see Mr. Davenport seriously, if at all, challenging the correctness of this. Accordingly these are our findings on this particular issue.
4. Mr. Maher goes on to explain that the Valuation Office was moving premises on the 6th March 1998 from Ely Place to the Irish Life Centre, Abbey Street and that as a

result of the turnover, staff, computers and other equipment was not available to him for approximately four days. He informed us and we accept that his Précis was in preliminary draft form only prior to the 6th March but that on being informed of the positive decision by the Bank of Ireland he set about with haste in order to complete that submission. It was not however completed or available to us until the 11th March. This is some nine days beyond the latest specified date for receipt. It is unsatisfactory, nevertheless in the circumstances, it is explainable and excusable.

5. ***Rule 7.1 of the Valuation Act 1988 (Appeals) Rules, 1988*** reads as follows:
"the Commissioner and any other parties shall give a summary of evidence proposed to be adduced to the Tribunal and there shall be an exchange of summaries between the parties including any comparisons to be relied upon in advance of the hearing."

That rule and the reasons for it were commented upon and specified in a judgment of this Tribunal given in the *Ray Murray Limited case (VA96/4/035)* which issued on the 11th June 1997. In general terms the Tribunal pointed out in that case that this rule if complied with had the effect of affording to both parties a reasonable knowledge of the case that each had to meet at the hearing, of offering them an opportunity of considering the evidence to be adduced and in particular, the comparisons to be relied upon. It gave them an opportunity of preparing for the case and furthermore gave them an opportunity of presenting to this Tribunal, which this Tribunal is entitled as a right to have, the best available evidence in any appeal before it. That case also pointed out that it was in the interest of the Tribunal to have a summary of the evidence as it afforded to members thereof a reasonable opportunity of considering the same in detail prior to the commencement of the hearing and furthermore of course it was in the public interest that this should be so, as accordingly the time spent on appeals would be reduced with the resulting saving of public cost.

6. In addition the consequences of failure to comply with this rule was also specified in the *Ray Murray Limited case (VA96/4/035)* and it is important to recall what was said

in page 4 of that judgment. This reads as follows:

"this Tribunal would like to make it clear that it would not under any circumstances accept or tolerate a non-compliance with the rule above mentioned. It is crucial to the fair and balanced administration of this Tribunal and to its obligation to the public, property owners and those involved in the rating/valuation business that the specified procedures are complied with. Failure to do so will have serious consequences for those in default. Depending on the particular circumstances in each case and of course bearing in mind fair procedures and the need to do and to be seen to do justice, it is our view that every procedural act and step taken after the service of the Notice of Appeal is nullified by the subsequent non-compliance with the aforesaid rule and that if such be the case this Tribunal will not, in future embark upon or hear any appeal so tainted even if otherwise it should be listed before us. In such circumstances the defaulting party will have to apply for a new listing. Any such relisting would be subject to specified conditions and would not be heard before all appeals then pending have been disposed of. Indeed this Tribunal would be receptive to and would seriously consider any submission to the effect that in such circumstances the Notice of Appeal itself is nullified and has no effect. These views as expressed do not have as their object an intention to penalise, they have the sole aim and intention of ensuring and if necessary of compelling compliance with the Tribunal's specified procedures."

7. There is no doubt but that in certain circumstances an individual will from time to time be late making submissions for reasons which are explainable and excusable. Those situations would be isolated, would not be repetitive and would be infrequent. We note that of the twenty five appeals emerging from the 1996 Clonmel revision Messrs Lisney appear in two. The first is Showerings Ireland Limited and the second is the subject appeal. In the first appeal the submission was seven days late and in this appeal as we have already said, the submission was eight days late.
8. We are satisfied that the decision to proceed with this appeal was taken on 6th March but of course the 6th March was at least four days beyond the latest specified date for

the submission to this Tribunal. If the submissions were ready as we were informed, earlier than the 10th March why were they not submitted to us? It is not our practice to forward the submissions to the opposing party. It is not and should not be the practice of delaying delivery to this Tribunal until a simultaneous transfer takes place between the parties. There is an obligation on both sides to submit to us for our consideration the submissions and to do so within time. Again we have had no explanation as to why, if the submissions were ready, they were not submitted to us rather than awaiting an exchange of précis between the parties. It seems to us that the last body or persons to be considered in this process was the Tribunal itself. It seems to us that if the internal management and organisation and if the internal method of communication between agent, legal advisors and the Bank of Ireland is such, that a decision can only be made four days beyond the specified latest date for submissions, then this Tribunal was entirely ignored and disregarded. In these circumstances, and we do not exaggerate when we say this, a practice of disregarding our rules creates a potential threat to the very process, procedures and structures of this Tribunal itself and we will not under any circumstances tolerate, permit, condone or otherwise leave uncondemned such a threat. We have no doubt that in these circumstances we have both expressed and implied jurisdiction to deal with the matter as we see fit and to insure that this does not continue.

9. In these circumstances we have come to the conclusion that the appeal in this case should be struck out and that the order of the Commissioner at first appeal stage should be confirmed. We will put a stay on that order for twenty one days within which time the appellant will have a right to apply to have the appeal reinstated if it so wishes. If it adopts that course it must do so on notice to the Commissioner, it must do so by swearing an affidavit and having on oath an explanation as to why in the first instance the submission was late and secondly if the submission was available before the 10th March as to why it was not submitted to us. On receipt of these documents the application to reinstate will be listed before us and dealt with at an oral hearing. If there is no such application the stay, will by effluxion of time terminate after the

twenty one days.

- 10.** In addition Mr. Sanfey, on behalf of the Commissioner seeks his costs on this application. We have considered at some length whether or not the Commissioner should get his costs. We have concluded but with no small measure of reluctance that we should reserve the question of costs. We do so because as a matter of fact the Commissioner's submission was late even though as we have pointed out above the explanation offered was in our view satisfactory and excusable. Nonetheless as a matter of fact it was late. In these circumstances we will reserve the question of costs.