

Appeal No. VA98/4/001

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

Transprovincial Investments Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Shop at Map Reference 75ab/2a, Main Street, Leixlip (Township), R.D Celbridge 1, Co. Kildare.

B E F O R E

Con Guiney - Barrister at Law

Deputy Chairman

George McDonnell - F.C.A.

Member

Marie Connellan - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF JUNE, 2000

By Notice of Appeal dated the 14th day of October 1998, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £10 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice of Appeal are that; “As owners of a shopping mall of eight shop units on Main Street, Leixlip Co. Kildare, sometime ago my client received a notice of an upward revision of the rateable valuation of Lot No. 75ab/1, a confectionery/newsagents facing the street. On behalf of the owner, I lodged an appeal with the Commissioner of Valuation.”

The block of eight units, including 75ab/1, have had a poor occupancy record, with many businesses ceasing to operate and several units being empty for long periods, largely because of lack of parking, initial rents which were set too high (and not paid in practice, even if mentioned in the leases), unsafe and uncongenial streetscape on a busy road, coupled with excessive valuations - one time set by officers of the Commissioner erroneously on the same basis as Dublin valuations, with a residual effect still present. Taking like with like, for example, I have found Leixlip valuations running 20 to 30% higher than those in Maynooth and Naas towns.

The decision of the Commissioner in relation to this appeal (on Lot 75a/1) was acceptable to my client, if not exactly as much as he would have wished for. We are not appealing this decision to the Tribunal.

I informed the officer charged with this appeal, when we spoke, that the occupier of lot 75ab/1 had abandoned the business, which was taken over by his relatives in order to honour the lease agreement. I also told him, when he enquired, that a small office (which happens to be 90 square feet) immediately behind the lot the subject of my appeal for my clients, was NOT part of lot 75ab/1, but a truncated part of the next lot, lot 75ab/2, which had a separate valuation for the whole, i.e. including the 90 square feet.

Neither I, nor my client, nor any other interested party lodged an appeal with the Commissioner against the valuation of the 90 square feet - which the Commissioner's office has now assigned the new lot no. 75ab/2a. Neither did the Commissioner put a valuation on this lot, and of necessity and for reasons of justice, a reduced/revised valuation on the larger residue of lot 75ab/2, prior to the "appeal" decision to value it at £10. It simply never had a separate valuation apart from being part of Lot 75ab/2.

The question of an appeal did not, and does not therefore arise in respect of this newly defined lot. The same view has been confirmed to me today by Ms. Mary Dalton, the Council's officer who issued the notice of 30/09/98 on the appeal decision. She is satisfied that no appeal was lodged on this lot and no separate valuation existed for it.

I ask the Tribunal therefore to declare as null and void the purported "appeal" decision by the Commissioner in respect of this lot and to order costs of this appeal against the Commissioner.

Finally, I can say that until recently the 90 square feet was empty; only recently has it been occupied on a part time basis by the voluntary secretary of Leixlip Chamber of Commerce; no rent has been paid on it by the Chamber. I have confirmed with the secretary of the Chamber, Mr. Michael Rodgers, that he has not been notified of the "appeal" decision of the Commissioner.

Valuation History

The relevant valuation history is that at revision stage both lots 75ab/1 and 75ab/2 were listed by Kildare County Council with a request to "Revise as necessary". At this stage Lot 75ab/1 had a valuation of £25 and Lot 75ab/2 a valuation of £28.

The revising valuer transferred part of the shop floor area of Lot 75ab/2 to 75ab/1 and valued it as a store. The result is that the revised figures for Lots 75ab/1 and 75ab/2 stood at £32 and £22 respectively. At first appeal inspection this procedure was found to be incorrect insofar as the transferred part did not form part of Lot 75ab/1 and was inadvertently valued with it as a store. It was therefore incumbent on the First Appeal Valuer, to rectify this situation. The valuation on Lot 75ab/1 was reduced from £32 to £28 the £4 difference being the amount attributable to the store valuation. Consequently the "store" was separately valued but now at a retail rate as it was deemed to be a separate unit with retail potential. This was the only remedy available and was deemed to be correct procedure in rating practice.

The Tribunal received a letter dated 14th day of October 1998 from Mr. John Colgan, who carries on business under the title Abacus Analysis, on 15th October 1998. Mr. Colgan was instructed by the appellant. This letter set out the aforesaid grounds of appeal.

A written submission prepared by Mr. Denis Maher on behalf of the respondent was received by the Tribunal on 8th December 1999. Mr. Maher is a District Valuer in the Valuation Office with approximately twenty-four years experience in rating valuation practice.

The written submission described the subject hereditament and outlined the reasons why a separate rateable hereditament emerged valued at £10 after the first appeal.

The appeal proceeded by way of an oral hearing, which took place in the Tribunal Offices, Dublin on the 17th day of December 1999.

Mr. John Colgan of Abacus Analysis appeared on behalf of the appellant. He said he was a self-employed chartered engineer and economist and had rating valuation experience dating back to 1972.

Mr. Maher appeared on behalf of the respondent.

Mr. Colgan made an affirmation with respect to the evidence he was about to give.

At this stage the Tribunal adjourned briefly to allow Mr. Colgan an opportunity to seek the agreement of Mr. Maher with respect to the admission in evidence of certain documents by Mr. Colgan.

On resumption of the hearing Mr. Colgan said he had secured the agreement of Mr. Maher to the admission of the following documents:

- (1) Copy of fax message from Hannigan Whyte & Associates to John Colgan dated 1st December 1997.
- (2) Copy of notification by Kildare County Council of the result of a revision on Lot 75ab/1, Main Street, Leixlip dated 12th November 1997.
- (3) Copy letter from John Colgan to the Secretary, Kildare County Council dated 3rd December 1997.
- (4) Copy map of Main Street, Leixlip showing *interalia* the subject hereditament.
- (5) Copy of site map showing the subject hereditament and adjoining units.
- (6) Copy site map of subject hereditament.
- (7) Copy fax from John Colgan to Mr. Maher dated 18th August 1998.

Mr. Colgan also put in evidence a site map showing the subject hereditament coloured yellow as located among the adjoining shop units.

Appellant's Case

Mr. Colgan in his testimony said he had been instructed to lodge an appeal with respect to the hereditament comprised at Lot No. 75 ab/1 at Main Street, Leixlip subsequent to the revision decision on the said property dated 12th November 1997.

Mr. Colgan said he had a conversation with Mr. Maher prior to the appeal decision.

During the course of the hearing there was some confusion as to the context of this conversation. Mr. Colgan said it took place at the subject hereditament while Mr. Maher said it took place over the telephone.

Mr. Colgan in further testimony said the discussion related to the rent for Lot No. 75 ab/1 and details about the unit, which is the subject of this appeal.

Mr. Colgan said that the subject hereditament had never been part of Lot No. 75 ab/1. The subject was in fact a truncated portion of Lot No. 75 ab/2. The subject hereditament had never been physically part of Lot No. 75 ab/1.

Mr. Colgan then referred to his fax message dated 18th August 1998. This supplied Mr. Maher with information as to the rent payable on Lot 75 ab/1. The fax also referred to the subject hereditament and *inter alia* stated it was being used on a part time basis by Leixlip Chamber of Commerce.

Mr. Colgan stated in his evidence that the internal area of the subject was 92 sq. ft.

Mr. Colgan said that the appellant had never got notice of the proposal to put a valuation on the subject hereditament. Furthermore the appellant was not informed as to the treatment by the Valuation Office of the bulk of Lot 75 ab/2. In the circumstances therefore the appellant had

been denied an opportunity to make representations to the Valuation Office prior to its decision at appeal stage.

In cross-examination Mr. Maher put it to Mr. Colgan that the Valuation code by virtue of Section 20 of the Valuation (Ireland) Act 1852 gave the Commissioner of Valuation power to alter and amend the valuation or statement of area of rateable hereditaments.

In reply Mr. Colgan did not challenge this legal proposition.

Under further cross-examination Mr. Colgan stated that Section 3(4)(a) of the Valuation Act 1988 should have been used to give notice to the appellant.

Mr. Maher put it to Mr. Colgan that this statutory procedure was only available at the revision stage and not at the appeal stage.

Mr. Maher also put it to Mr. Colgan that he had an opportunity at the appeal stage to make representations about the subject hereditament and he cited Mr. Colgan's fax message dated 18th August 1998.

Mr. Thomas Hannigan gave sworn testimony on behalf of the appellant. He said he was an architect and had his offices over Lot 75 ab/1. The buildings at the site had been constructed in 1987/1988. There were eight units in total there.

In further testimony Mr. Hannigan said the subject hereditament had been part of Lot 75 ab/2. Subsequently the occupier of Lot 75 ab/2 had a door installed at the front of his unit. In 1994 the landlord separated the subject hereditament from Lot 75 ab/2 by erecting a wall and also provided it with a door.

Mr. Hannigan said he could not recall receiving any notice about the subject from the County Council. He said that any notices he had received had been sent to Mr. Colgan.

Finally Mr. Hannigan said that the subject hereditament had no facilities. At the present time the local Chamber of Commerce used it essentially as a postal address.

Respondent's Case

In his sworn testimony Mr. Maher adopted his written submission as his evidence to the Tribunal.

He said at the appeal stage he had looked at the work of the revising valuer with respect to Lots 75 ab/1 and 75 ab/2. The revising valuer had valued 75 ab/1 as shop with store at the rear. The revising valuer had taken the store out of the valuation of Lot 75 ab/2.

Mr. Maher said that after inspecting these two lots at the appeal stage he found that the store was not part of Lot 75 ab/1.

He recommended a reduction in the rateable valuation of this lot. As the store was a separate entity with its own entrance and was being used as an office he valued it as a separate hereditament.

Mr. Maher said he was entitled to take this course by virtue of Section 20 of the Valuation (Ireland) Act 1852.

Finally Mr. Maher said he would have explained the procedure he was adopting to Mr. Colgan in a telephone conversation.

Under cross-examination by Mr. Colgan, Mr. Maher was prepared to accept the area of the subject hereditament as being 92 sq. ft.

Under further cross-examination Mr. Maher said that prior to the appeal decision he had made enquiries about the store, which subsequently to the appeal decision became the subject hereditament. He said Mr. Colgan's fax message to him dated 18th August 1998 corroborated this.

In his closing submissions Mr. Colgan re-iterated that there was no notice to the appellant prior to the appeal decision about the creation of the subject hereditament. Therefore the appellant had no opportunity to make representations about the valuation of the subject property.

Submissions

In his closing submissions Mr. Maher said he dealt with the appeal in accordance with the provisions of the statutory code relating to valuation. He asked the Tribunal to affirm the Commissioner of Valuations decision to put a rateable valuation of £10 on the subject hereditament.

Prior to the conclusion of the hearing Mr. Colgan applied to the Tribunal to determine the rateability of the subject before hearing any arguments from him about the quantum of the valuation. Mr. Maher said in response to this application that he would be objecting to the raising of quantum as a ground of appeal by the appellant. This was on the basis that quantum, as a ground of appeal was not raised by the appellant at the appeal stage.

The Tribunal acceded to this application by Mr. Colgan.

Findings and Determination

The Tribunal has considered the written submissions and evidence offered by the appellant and the respondent. The Tribunal has also considered the submissions of the appellant and the respondent.

The Tribunal finds the unit which is now the subject hereditament, was incorrectly included in the valuation of Lot No. 75 ab/1 at the revision stage, which revision was notified to the appellant by Kildare County Council on 12th November 1997.

The Tribunal finds that the respondent in creating the subject hereditament as a rateable entity acted in accordance with the powers given in law to him by Section 20 of the Valuation (Ireland) Act 1852.

This section provides at appeal stage that the “*Commissioner of Valuation shall have power to alter and amend the Valuation or statement of the area of the tenement or rateable hereditament so appealed against, and also to alter and amend the valuation or statement of any other tenement or hereditament against which there shall have been no appeal, but which may appear to him to be similarly circumstanced*”.

Mr. Colgan’s legal submission about the applicability of Section 3(4)(a) of the Valuation Act 1988 does not defeat the provisions of Section 20 Valuation (Ireland) Act 1852 as that Section of the Valuation Act 1988 is confined to the revision stage of the appeal process.

Accordingly the Tribunal affirms the decision of the Commissioner of Valuation in fixing a rateable valuation of £10 on the subject hereditament.