

Appeal No. VA07/1/003

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 2001**  
**VALUATION ACT, 2001**

**Family and Life Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Office(s) at Lot No. 26 (Ground and First Floors), Mountjoy Square East, Mountjoy B, Mountjoy, County Borough of Dublin

**B E F O R E**

**John O'Donnell - Senior Counsel**

**Chairperson**

**Joseph Murray - B.L.**

**Member**

**Leonie Reynolds - Barrister**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**

**ISSUED ON THE 23RD DAY OF JULY, 2007**

By Notice of Appeal dated the 14th day of February, 2007 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €70.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal and in a letter attached thereto, a copy of which are in the Appendix attached to this judgment.

The appeal proceeded by way of an oral hearing that took place in the offices of the Valuation Tribunal, Ormond House, Ormond Quay Upper, Dublin, 7 on the 30<sup>th</sup> April, 2007. Mr. James O'Reilly, SC and Mr. Colm Hennessy, BL, instructed by Mr. Richard Clinch, Solicitor, represented the appellant. Mr. Colm MacEochaidh, BL, instructed by the Chief State Solicitor, represented the respondent. Mr. Peter Scully, Business Manager of the appellant company and Mr. David Manly, a Director of the appellant company, gave evidence on behalf of the appellant.

## **INTRODUCTION**

The subject property is occupied by the Appellant Family and Life Limited. The property is located at 26 Mountjoy Square East, Dublin 1. Mr Peter Scully, owner of the property and Business Manager of the Appellant, leases it to the Appellant company. The tenancy commenced on 1<sup>st</sup> June 2004 for a period of 3½ years. The rent is undisclosed. The Appellant Family and Life Limited is a company limited by guarantee. Its primary objects as set out in the Memorandum of Association are:

- (i) To promote an awareness of the sanctity and sacredness of human life from conception till natural death.
- (ii) To assist and promote the life and welfare of mothers during pregnancy and of their children from the time of conception up to, during, and after birth.

Mr Scully is responsible for fund raising for various projects the Appellant operates both in Ireland and overseas.

In essence two issues were before the Tribunal for determination:

- (a) Does the area of the subject property include the 1<sup>st</sup> floor?
- (b) Is the Appellant exempt from rating in respect of its occupation of the property because of its "charitable status"?

### **(a) The Area of the Property**

Mr Colm Mac Eochaidh BL, for the Respondent, said he wished to point out that the first floor of the property at 26 Mountjoy Square East had been included in the rateable area. No objection was taken to this by the Appellant either at Representations stage or First Appeal stage and, accordingly, it could not be raised now before the Tribunal, save in exceptional circumstances. On behalf of the Appellant, Mr. James O'Reilly indicated the Appellant had never occupied the first floor at any stage and were not even aware that it was being rated.

Evidence was given on behalf of the Appellant that when the rating officer visited the building, he talked with Mr. Scully mainly about Georgian architecture. The appellant had no idea that the rating process included the first floor. There appeared to be a lack of “consensus ad idem”. However, the parties agreed that the charitable status issue should first proceed before the Tribunal since – depending on the outcome of this issue - it may not be necessary to determine the issue of rateable area.

### **(b)Charitable Status**

#### **THE APPELLANT’S EVIDENCE**

On behalf of the Appellant Mr Peter Scully, Business Manager of the Appellant, gave evidence of the company structure and Memorandum and the Articles of Association. He outlined the share capital and non profit nature of the organisation. He also gave evidence of the procedure on winding up and non-payment to members in order to establish that it is a charitable organisation and conforms with Section 3 of the Act. Mr Scully also gave evidence in relation to its main objects which appear to be the promotion of respect for the sanctity of human life.

He also gave evidence of the company’s activities. The company has both national and international projects. The international projects consist of The Polish Fund and The Good Shepherd Fund. The Polish Fund was set up in the mid 1990s to finance an organisation in Poland called The Friends of Human Rights. It engages in pregnancy counselling and associated activities. It also operates an education programme for schools to promote awareness of the sanctity and sacredness of life.

The Good Shepherd Fund was also established when the Appellant was approached in the mid 1990s by a religious person in Bangkok who ran a centre to rescue poor children from the streets and helped women who engaged in prostitution and who were forced to have abortions. The Appellant responded by assisting over a number of years in the building of extensions to the centre. By 2000 that centre had expanded and emerged from a difficult situation.

The Appellant then focussed its attention on other needy people in the world. They were approached by a Sister McEntee in Manila who also ran a home for destitute children (Our Lady’s Half Way House). Children are taken into the home and put through private

schooling. The Appellant helps to finance the upkeep, medical and educational requirements of the children.

In addition the Appellant runs a helpline for women with a crisis pregnancy; this consists of providing information and advice for such women, who are also provided (if they wish) with free access to a psychiatrist. The Appellant also provides advice to the wider circle of the family and friends of the individual concerned. Through their website they have links to various adoption agencies. Discussion groups are organised for people having similar problems and experiences.

The Appellant hosts a website and produces a range of leaflets and DVDs to assist in informing people about various important (as the Appellant sees it) issues relating to the unborn and areas such as stem cell research. It promotes its objectives through publications and cinema commercials. The Tribunal also heard evidence of the practice of the Appellant in sending unsolicited materials including foetus type dolls to schools in Ireland. This is part of an Educate for Life programme aimed at second-level schools. Visits are made to schools where students are taught about the development of human life from conception to birth.

Mr Scully contended that the Appellant was thus a charitable organisation which was involved in providing education. He contended that the Appellant also in effect engages in the relief of poverty. In this regard Mr. Scully emphasised that this did not just include the work done abroad and in Ireland to assist street children and other poor. In his view the Appellant sees poverty as not just physical poverty, but intellectual poverty as well.

The Respondent did not call evidence on this issue.

### **THE APPELLANT'S SUBMISSIONS**

On behalf of the Appellant Mr. James O'Reilly S.C. submitted that Family and Life was a company without a share capital whose structure met the definition of a "charitable organisation" within section 3 of the Valuation Act 2001. It was set up for charitable purposes and its main objects were to promote awareness and respect for the sanctity of human life from conception till natural death. It also sought to help and assist women with a crisis pregnancy. It is a non profit company limited by guarantee. In the event of its being wound up its surplus would go to another charitable organisation with similar objects. The

Articles of Association prohibit distribution of income to its members and prohibit payments to its members (other than out of pocket expenses).

Accordingly it was submitted that the property occupied by Family and Life should not be rateable as it comes within Paragraph 16, Schedule 4 of the Valuation Act of 2001. The primary purpose is to expend funds for charitable purposes (which include poverty and the advancement of education). It was further submitted that in **In re the Worth Library [1995] 2 I.R. 301** it was held that trusts dealing with education and the relief of poverty were assumed to be for charitable purposes.

Mr. O'Reilly submitted that The Polish Fund and The Good Shepherd Fund are used exclusively for charitable purposes and come within the spirit and intention of the legislation. He contended that we can and should assume they are for charitable purposes unless there is evidence to the contrary. The charitable purpose of the relief of poverty and the advancement of education come within category 1 and 2 of **Commissioners for Special Purposes of Income Tax v Pemsel [1891] AC 531**; they are charitable purposes *pro bono publico*.

The Appellant also submitted that its activities also came within the 4<sup>th</sup> category of **Pemsel** of "other purposes beneficial to the community". Mr O'Reilly acknowledged that the Appellant carried a heavier onus in trying to establish that it came within this category. Thus the Appellant submitted that he came within categories 1, 2 and 4 of **Pemsel**.

Mr O'Reilly referred us to a number of authorities. In **Re Worth** Keane J. referred to a judgement of Lord Simonds in **National Anti- Vivisection Society v. Inland Revenue Commissioners [1948] A.C. 31** in which it was stated that if the purpose of the trust is within one of the heads of charity forming the first three classes in **Pemsel** the court will assume it to be for the benefit of the community and therefore charitable, unless the contrary is shown. It further stated that the court will not be astute to defeat on doubtful evidence of the benevolent intention of the donor. Mr. O'Reilly submitted that the purposes for which his clients existed came within categories 1 and 2 of **Pemsel** (relief of poverty and education). He submitted that the courts can assume that the purposes in question are for the benefit of the community and therefore charitable unless the contrary is shown; it is up to the Respondent to show the contrary. He then referred to Keane J's judgment in **Re Worth** where he stated

that in every case the intention of the testator is of paramount importance. If the testator intended to advance a charitable object recognised by law, his gift will be charitable.

Further, even if a gift does not come within the first three categories, the fact that the testator's view as to public utility – e.g. vegetarianism – is not shared by many people will not prevent it from being a valid charitable object within the 4<sup>th</sup> category provided it is not “*illegal, irrational or contra bonos mores*”. This was the majority decision in the Irish Court of Appeal in **In re Cranston, Webb v. Oldfield [1898] 1 I.R. 431** as Keane J. understood it. In his submission Keane J. was of the opinion that the divergence of views between the Irish and English courts as regards the subjective and objective tests which applied to gifts in the 4<sup>th</sup> category was not material. Mr. O'Reilly concluded his submissions by suggesting that the Commissioner for Valuation seeks to rely on an objective standard as he wants to broaden the taxation base, especially as domestic property is exempt from rateable valuation.

### **THE RESPONDENT'S SUBMISSIONS**

On behalf of the Respondent, Mr Colm Mac Eochaidh, BL submitted that the Appellant is a campaign organisation. In getting its pro-life message across, it does not have a target group. It is not possible to see where the public benefit lies. It targets the world in general but that is not sufficient for charitable purposes. One cannot set up a trust for the benefit of everybody. By way of example, Mr Mac Eochaidh suggested that going to a particular school and promoting a certain set of values is not education in the classical sense and does not come within the meaning of the **Pemsel** classification. In his submission in **VA06/1/012 - Citizens Information Service (CIS)** the right approach is used; an objective test is used. It is also clear from that decision that the beneficiaries must not be numerically negligible

Mr. Mac Eochaidh asked: what part of society is benefiting in this case? The beneficiaries must be identified. In the **CIS** case this was a particular group of citizens in the inner city. In the instant case the Appellant targets everybody but does not seek to confer a benefit on a particular group. If they provided a helpline service to women in difficulties who seek counselling they might have a target group. However, it appeared that this activity is peripheral to the main activity of promoting their cause and therefore could not benefit under the 4<sup>th</sup> Category of **Pemsel**. The Appellant is set up to benefit everybody.

Mr Mac Eochaidh noted that the Applicant referred to **Re Worth** and Keane J's comment that a trust will be considered charitable if it conforms to the spirit and intendment of the Act.

In his view however we should look to the new legislation i.e. the Valuation Act 2001. Of the four categories of **Pemsel** two are exempted from Schedule 4 of the Act. In the light of this, the courts and the Tribunal should look at **Pemsel** from a different perspective for rating purposes. The remaining two categories are covered in Schedule 4 in Paragraphs 7 and 10. In considering poverty and the 4<sup>th</sup> category “of other purposes beneficial to the community” we can only look to **Pemsel**.

In his submission there is insufficient evidence before the Tribunal as to what part or sector of society benefits from the activities of the Appellant; this is the main difficulty for the appellants. In all other cases a particular group was identified. This was the case in **CIS** where a particular inner city group of citizens were identified from the rest of society as a group who would benefit and did benefit. There must be an identifiable group. However the Appellant does not have an identifiable group. It aims at the whole world. Accordingly it fails the first test.

Mr. Mac Eochaidh also submitted that the intention of the testator in private trusts should not apply to charities for rating law purposes. Much depends on the purpose of the trust and an objective approach in interpreting this is better. He also claimed that the Appellant’s witness had misinterpreted the Supreme Court’s interpretation of Article 40.3 of the Constitution. Mr Scully was not aware that abortion is permitted in limited circumstances. The Appellant thus promotes a view of the Constitution which is contrary to the views of the Supreme Court. The only activity they engage in is providing a telephone service or helpline service to pregnant women in distress. This is only peripheral and cannot fall under the 4<sup>th</sup> category of **Pemsel**. Visiting schools to promote their values is not education (certainly not in the classical sense) and does not come within category 2 of **Pemsel** or Paragraph 10 of Schedule 4. In his submission it was not permissible to set up a trust for the benefit of everybody; there must be a target group. The purpose of the trust is important. He accepted that the Respondent did not argue with the guidelines on charitable purposes given by the Tribunal in **CIS** except to say that account must be taken of the fact that religion and education are expressly provided for in Paragraph 7 and Paragraph 10 of Schedule 4. As a result, the remaining categories in **Pemsel** must be viewed differently. Finally he submitted that being charitable in name only is not sufficient. The approach in **CIS** is correct as it followed the majority ruling in **Oppenheim v. Tobacco Securities Trust Co [1951] AC 297** with regard to an objective test of public benefit .

## THE LAW

In order to be deemed to have charitable status for the purposes of the Valuation Act an entity must establish that (a) it is a charitable organisation and (b) it is established for “charitable purposes”. A charitable organisation means a company or body corporate or unincorporated body which meets the requirements set down in Section 3 of the Valuation Act, 2001. Accordingly to qualify for charitable status under (a) the Memorandum and Articles of Association of the company must comply with Section 3. However, the Valuation Act does not define what is meant by “charitable purposes”. Accordingly it is necessary to search for the meaning of these concepts in case law on the law of charitable trusts. Moreover, we are aware that the law on charities in Ireland has changed with the repeal of sections 63 and 64 of the Poor Law Relief Ireland 1838 by Schedule 1 of the Valuation Act 2001. However we regard **Pemsel** as the “*locus classicus*” on the subject of charities. The classification adopted by Lord Macnaghten classified trusts into four categories:

- 1 Trusts for the relief of poverty
- 2 Trusts for the advancement of education
- 3 Trusts for the advancement of religion
- 4 Trusts for other purposes beneficial to the community

Trusts are considered to be charitable if they fall within any of the four headings. These four headings were approved by Mr. Justice Keane in **Re Worth**. The Tribunal notes that Mr. Justice Keane’s comments were made 7 years before the Valuation Act of 2001 came into force in May 2002. Therefore, any use of the **Pemsel** classification for guidance must be tempered by the provisions of the Act. Two of the **Pemsel** categories, religion and education, are now expressly covered by Schedule 4 of the Valuation Act in Paragraphs 7 and 10 respectively . “Relief of poverty” and “Other purposes beneficial to the community” are not covered by the Schedule.

The legal requirements for what constitutes a charitable organisation are contained in section 3 of the Valuation Act. “Charitable purposes” are referred to in Paragraph 16 of Schedule 4 but are not defined in this paragraph or elsewhere. Paragraph 16 also states that any land or building used by a charitable organisation must be used exclusively for charitable purposes and otherwise than for private profit.

## **FINDINGS**

### **“Charitable Organisation”**

It appears on the evidence given on behalf of the Appellant by Mr. Scully that the Memorandum and Articles of Association of the Appellant conform to the definition of “charitable organisation” in Section 3 of the Valuation Act 2001. No evidence or submissions were made to the contrary by the Respondent. The Memorandum clearly sets out the primary and secondary objects as being “*to promote an awareness of the sanctity and sacredness of human life from conception till natural death*” and “*to assist and promote the life and welfare of mothers during pregnancy and of their children from the time of conception up to, during, and after birth*”. The secondary objects are, inter alia, to educate persons in their obligation to respect and protect human life. We are of the view that the Appellant complies with the formal administrative requirements of the Act to be a “charitable organisation”. However, this is irrelevant unless the Appellant can establish that it is also established for charitable purposes.

### **“Charitable Purposes”**

Accepting that a trust cannot be for the benefit of everyone, but for a sector of society we ask ourselves: what is the target group of the Appellant? Its activities cover a wide range. Its main purpose is to promote awareness and respect for the sanctity and sacredness of human life from conception till natural death. Put in a more colloquial way, its main objective could be said to be to protect the unborn. This would appear to be its “raison d’etre” or the main reason for its existence. Accordingly, while it has a wide educational audience, its principal target group would appear to be women who contemplate abortion.

Abortion is a longstanding and highly controversial issue in Irish society. It is unnecessary here to rehearse the arguments made at various times on either side of the debate. It is appropriate to note however that the right to life of the unborn was inserted into the Constitution by the 8<sup>th</sup> Amendment in 1983 and is contained in Article 40.3.3. Although it is a fundamental right, it is not absolute and termination of pregnancy is permitted in limited circumstances. In the X case in 1992 the Supreme Court held that termination of pregnancy is permissible in cases where there is a real and substantial risk to the “life” as opposed to the “health” of the mother. Regardless of Article 40 and the Supreme Courts interpretation of it, it would appear that a significant number of Irish women (perhaps as high as 5,000 per annum) have travelled and continue to travel to seek abortion in England. While no recent

figures were supplied in evidence in relation to this we believe we are entitled to take notice of these statistics which are and have been for many years in the public domain. Having regard to this and to the number of women in Ireland per annum who find themselves in what is referred to by some as a “crisis” or “unwanted” pregnancy (which obviously exceeds the number travelling abroad to seek abortion) we take the view that the target group is not a “numerically negligible” figure.

In our view this organisation offers particular options for women who face crisis pregnancies. The Appellant seeks to encourage women to carry their babies full term, and seeks to dissuade them from availing of the option of abortion. It would appear that having made contact with (or been contacted by) the Appellant, many women reject the option of abortion and go for the alternative of either keeping their babies or having their babies put up for adoption. The Tribunal’s view on the utility or otherwise of this achievement is not relevant. We note the submission of Mr. O’Reilly that even if a gift does not come within the first three categories, the fact that the testator’s view as to public utility – e.g. vegetarianism – is not shared by many people will not prevent it from being a valid charitable object within the 4<sup>th</sup> category provided it is not “illegal, irrational or contra bonos mores”. While on one view this would open up the concept of “charitable objective” to almost any objective one could think of, we are satisfied in the instant case that the Appellant’s objectives can be defined as charitable.

Furthermore, in Article 40.3.3 of the Constitution the State acknowledges the right to life of the unborn child. In so far as the objectives of the Appellant are to protect the life of the unborn these objectives must be regarded as being in the public interest or the common good; it follows that a public benefit is derived from the implementation of those objectives even if the manner of implementation might seem at times extreme to some. However, that of itself does not deprive the Appellant organisation of its entitlement to charitable status in the instant case.

We conclude that the Appellant has established that there is public benefit to its purposes. We are also of the view that the beneficiaries of the activities of the Appellant are not numerically negligible. Accordingly the Appellant has a valid charitable object which comes within the fourth category of **Pemsel**, its purpose being an “other purpose beneficial to the community”.

**“Education”**

The Tribunal sees the “educational” element of the Appellant as promotional rather than educational. The Educate for Life programme is a secondary object of the company and in so far as there is an educational element involved, this would be the promotion of an understanding of the developing foetus. This involves some degree of biological education as well as promoting the values on the sanctity of life. However, in our view this simply promotes a value rather than developing in an educational way the overall person. Nor is it part of the core activities of the company. Accordingly the Educate for Life programme does not come within the second category of **Pemsel** as “trusts for the advancement of education”; nor does this activity come within the concept of “education” deriving from Paragraph 10 of Schedule 4 of the Valuation Act.

**“Relief of poverty”**

In our view the activities of the Appellant in maintaining the Good Shepherd funding programme and the funding of Our Lady’s Half Way House in Manila contain elements for the relief of poverty. However, while laudable, this element of the Appellant’s activities is not part of its core activities. Rather it is an adjunct to the primary activity of the Appellant in promoting respect for the sanctity of life and protection of the unborn.

**Determination**

For the reasons set out above the subject property of the Appellant (which is the Appellant’s base from which its organisation is administered) is not rateable within Paragraph 16 of Schedule 4 of the 2001 Act since it comes within the definition of “charitable organisation” as referred to in Section 3 of the said Act. Accordingly the issue of the rateability (or otherwise) of the first floor of the Appellant’s property at 26, Mountjoy Square East does not arise.

And the Tribunal so determines.