

Appeal No. VA96/6/016,
VA96/6/017 & VA96/6/018

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

Ulster Bank Limited
Allied Irish Bank
Trustees Savings Bank

APPELLANTS

and

Commissioner of Valuation

RESPONDENT

RE: Bank (VA96/6/016) at Map Reference 70 (incl. 1 to 4a Whites Lane), O'Connell Street,
ED: Clonmel West Urban, UD: Clonmel, Tipperary S.R., Co. Tipperary

Bank & Yard (VA96/6/017) at Map Reference 65a to 67a, O'Connell Street, ED: Clonmel West
Urban, UD: Clonmel, Tipperary S.R., Co. Tipperary

Bank (VA96/6/018) at Map Reference 12a, Gladstone Street, ED: Clonmel West Urban, UD:
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

Ann Hargaden - FRICS.FSCS

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 20TH DAY OF MARCH, 1998

1. In each of these three cases the Appellants have appealed against the determination of the Commissioner of Valuation in placing on the Ulster Bank a Rateable Valuation of £110, on the Trustee Savings Bank premises a valuation of £450 and on the A.I.B.

Bank premises a valuation of £125. Messrs. Donal O'Buachalla & Company are the Agents acting on behalf of the Ratepayers with Mr. Denis Maher the Appeal Valuer representing the Commissioner of Valuation.

2. Originally the Tribunal wrote to the parties involved in these appeals indicating that all précis of evidence would have to be in by the 26th January 1998. In ease of Agents, particularly those who were involved in more than one appeal from the Clonmel Revision, the Tribunal by way of letter dated the 18th December 1997 confirmed that these three cases would be listed for hearing on the 16th March and that all submissions had to be in by the 2nd March. In all of these three cases the submissions, on behalf of the Appellants which were incomplete, were received by this Tribunal on the 11th March which was nine days late. I say they were "incomplete" because as late as this a.m. we have received further revised and/or additional comparisons as far apart as Castlebar and Newbridge. In these circumstances the Commissioner makes an application to have these appeals adjourned on the basis of the lateness of the original submissions and on the basis that there were further revised and/or additional comparisons submitted this morning and that accordingly the Appeal Valuer, Mr. Maher did not have a sufficient opportunity of either assessing the submissions as originally made or of obtaining information on the comparisons furnished this morning and/or consulting with counsel so that the latter would have a reasonable opportunity of being fully briefed for the hearings.

3. The letter of the 18th December which we have referred to was in effect a request made pursuant to **Rule 7(1) of the Valuation Act 1988 (Appeal Rules)** of that year. These said rules were made by the Valuation Tribunal pursuant to the **Valuation Act 1988**. Rule 7(1) reads:

"the Commissioner and any other party 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".

The purpose of this rule is several fold. Firstly, it ensures that both parties will have an opportunity of adequately preparing for the hearing well in advance of the date upon which the appeal is listed. Secondly, it ensures that the opposite party whether it be the Appellant or the Commissioner, is aware in broad terms of the evidence which the presenting party intends to adduce at the hearing of the appeal. Thirdly, at least in cases where comparative evidence is relied upon, this summary affords the receiving party an opportunity of making further enquiries and carrying out further inspections all to the effect of being able to adequately and fairly deal with the evidence on the appeal. Fourthly, it permits the members of the Tribunal to appraise themselves of the broad and general nature of the evidence proposed to be adduced at the appeal.

Fifthly, it reduces costs, saves time and thus makes the best use of the overall resources available to this Tribunal. And sixthly, it is within the public interest and it serves the administration of justice that being an essential element in ensuring that fair procedures and a fair hearing is permitted to each party who appears before us.

What I have just read is an extract from a judgment given by this Tribunal in the case of *Ray Murray Limited v. Commissioner of Valuation (VA96/4/035)*, issued on the 11th June 1997.

4. These three cases as we have said arise from a revision carried out in November 1995 in the Clonmel area. Messrs. Donal O'Buachalla & Company were involved in thirteen of the twenty five appeals to this Tribunal arising out of that revision.

Because of the number of such appeals and the diverse nature of the hereditaments involved, the Tribunal decided to have what was in effect a call over of all 25 cases on the 25th November 1997. Each Agent who had one or more cases arising out of the Clonmel revision was notified of this callover and were asked to attend in order to firstly identify the core issues in the appeals, secondly, to give an estimate of the duration of each appeal, thirdly, to offer an opinion as to how and in what way the appeals could be appropriately categorised and finally to indicate whether or not Counsel was being retained in these particular appeals. Unfortunately the

representative from Messrs. Donal O'Buachalla & Company who attended, could not tell us what the core issues were in any of the thirteen appeals in which his firm was involved, could not give an estimate of the duration of any appeal or as to how long it would take, could not offer an opinion as to how or as to what was the appropriate manner in which the appeals could be categorised and so taken, and could not tell us whether or not in any of the appeals counsel was going to be retained. The

result was that the Tribunal was deprived of this information in compiling its list and was obliged to prescribe a timetable and an agenda almost *in vacuo*. It thus embarked upon the commencement of the appeals from the Clonmel Revision.

5. In the first case in which Messrs. Donal O'Buachalla & Company were involved the issue of the fraction arose. The raising of this issue was never flagged in any real sense to this Tribunal and quite clearly it is an important issue with potentially widespread consequences. If we had been informed at the call over on 25th November 1997 or indeed at any time prior to the finalisation of the issued list we would have taken quite a different course in the manner and way in which we arranged to hear those appeals, in where the appeals were to be heard and in how we embarked upon those hearings. This we think is about the third time that we have commenced hearing the Clonmel Appeals. For the second time we are facing an application by the Commissioner for an adjournment, essentially because of late submissions with the result that the Appeal Valuer who everybody knows is dealing with the entirety of these appeals has not had an appropriate opportunity of considering the contents of the applicants submission and has not had an appropriate opportunity to consider the entirety of the comparative evidence to be relied upon by the applicant in each of these cases.

6. In the case of *Ray Murray Limited case (VA96/4/035)* supra the Tribunal dealt with the consequences of non-compliance with Rule 7(1) and at page four of that judgment set out the following:

"this Tribunal would like to make it clear that it will 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 null and void 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."

We adopt and follow the decision of the Tribunal in the *Ray Murray Limited* (VA96/4/035) case and in particular the quotations which I have extracted from that judgement as given above. In addition to that judgement which was given in June of last year, this Tribunal has made its views known on several occasions during the course of discussions in the context of hearings. It has informed the parties of the absolute necessity of compliance with this rule and of the absolute desirability, indeed the mandatory obligation to ensure, that the same be complied with within the specified time scale. Our views therefore are well known, are well publicized and are available to all those who wish to listen.

7. There can of course be isolated cases for which no-one, objectively or reasonably could apportion blame on those who are in default. There can be individual circumstances which undoubtedly are excusable. But alas and with regret this does not appear to be the case with regard to Messrs. Donal O'Buachalla & Company Limited. I have before me a list of twenty four appeals between the 22nd September 1997 and the 16th March 1998 and in all of those cases no submission has been received by this Tribunal within the specified time. The delay admittedly in some instance has been quite short, perhaps two or three days but, in others it has exceeded seven days, ten days and in one case it has gone as far as twenty one days over the due date. Consequently this is not in our view an isolated situation or an isolated case which can be explained away by excusing circumstances; certainly no explanation has been offered or proffered to us as to why in these three cases submissions were not made within time.

Therefore, from the limited history summarised above one can only conclude that the delays are persistent, repetitive and indeed one could almost say deliberate.

8. It is not an exaggeration to say that if this continues it poses a serious threat to the process, procedures and structure of the Tribunal itself. We cannot, as I am sure everybody will agree, permit or tolerate this.

9. In this case the Commissioner has said through Mr. Sanfey that the Appeal Valuer has not had an adequate opportunity of considering the submission which was I think received by him late Tuesday afternoon. In addition he has said that he has not had an adequate opportunity and this quite evidently is the case of even considering the comparisons contained in a document which we received this morning. In addition as everybody knows this Tribunal is staffed by part time people who otherwise have full time professional commitments. For example two of this present compliment were in Cavan on Friday hearing appeals. Consequently, it is unreasonable to expect that a Tribunal of this nature which is not full time and which is not available throughout the normal working day five days a week to consider in any meaningful way submissions which are received by us persistently late and persistently outside the time specified in Rule 7(1).

10. We are therefore quite satisfied that we have both express and implied jurisdiction to take whatever steps are necessary in order to safeguard the integral process, the integrity and structure of this Tribunal. We are therefore satisfied that the application made by the Commissioner is well justified. Accordingly, we propose to strike out the appeals in these three cases and to affirm the rateable valuation placed on the subject property by the Commissioner of Valuation at first appeal stage. We will however, but only with some reluctance, place a stay on that order for twenty one days from the date hereon. During that time the three Appellants will be given liberty to apply to have their appeals relisted. They can make this application only on notice to the Commissioner and only where there is sworn evidence on affidavit setting out the circumstances in which the submissions were late and setting out an acceptable explanation as to why that was the case. On receipt of such an application the said will then be listed for hearing before this Tribunal. If such an application is made within twenty one days the stay will continue until that application has been determined by this Tribunal. If there is no such application within twenty one days then the stay will automatically

terminate by effluxion of time and the rateable valuations placed by the Commissioner of Valuation at first appeal stage will remain.

- 11.** The Commissioner through Mr. Sanfey has also sought the costs in relation to these three appeals and that application is resisted by Mr. Hickey essentially on the basis that the submissions by the Appeal Valuer were also late. There is in our view no comparison whatsoever between any lateness of the submissions by Mr. Maher with the lateness of the submissions made on behalf of the Appellants. It must be recalled that Mr. Maher is the sole Appeal Valuer dealing with all the Clonmel appeals.

Secondly, we are satisfied from a consideration of the other appeals in which Mr. Maher is involved that any lateness is not significant, is not threatening the work or the process of this Tribunal and can we think properly be described as isolated, and explained by the fact that he is dealing with all of these appeals. We are therefore completely satisfied that there is no valid basis in attempting to link any lateness of Mr. Maher with the undoubted and persistent lateness that has taken place in the case of Agents retained on behalf of the appeal. In these circumstances we again, with no hesitation whatsoever agree costs should be given to the Commissioner and we so determine in each of these cases.