

THE HIGH COURT

[2019 No. 1370 SS]

IN THE MATTER OF THE VALUATION ACTS 2001 AND 2015

BETWEEN

COMMISSIONER OF VALUATION

APPELLANT

AND

SEVEN WONDERS LIMITED

RESPONDENT

**JUDGMENT of Mr. Justice Meenan delivered on the 18th day of September, 2020**

**Introduction**

1. This is a case stated by the Valuation Tribunal under the Valuation Act 2001 ("the Act of 2001") upon a request addressed to the chairperson of the Valuation Tribunal pursuant to s. 39(2) of the Act of 2001, the appellant having declared dissatisfaction with the determination of the Tribunal made on 5 August 2016 as being erroneous in point of law.

**Background**

2. The property of the respondent is a ground floor café on a corner location at Excise Walk in the IFSC, off Mayor Street Lower, in the County of the Borough of Dublin. Outside the café are a number of tables and chairs, referred to as being "*street furniture*".
3. The valuation of the respondent's property was determined by the appellant in the sum of €20,700. This amount was arrived at by the inclusion of street furniture in the property for the purpose of the valuation.
4. This determination was appealed to the Valuation Tribunal on 5 August 2016. The appeal was allowed and the net annual value of the property was reduced to €16,000. The grounds of appeal before the Valuation Tribunal included the following: -

"Right of street furniture is not a rateable asset. There is no licence fee paid to the City Council in relation to the subject. This should be struck off the valuation. The ground floor level more than adequately includes any enhancement for the street furniture which is of very limited value at this location."

5. In its determination, the Valuation Tribunal held, *inter alia*: -

"...the Tribunal found as a fact that there were a number of inconsistencies in the way that the 'right to street furniture' was treated for rating purposes by the Valuation Office and found as a fact that the appellant [the respondent in these proceedings] had offered a number of comparisons in close proximity to the subject property that had been valued with no addition for street furniture. The Tribunal made a finding that the 'right to street furniture' should not be included in the valuation of the property."

**Question for the Opinion of the High Court**

6. The question for determination is: -

“Having regard to the provisions of the Valuation Act 2001, in particular s. 15 and Schedule 3 thereof, was the Valuation Tribunal correct in law in finding that the ‘right to street furniture’ is exempt from rating and should not be included in the valuation of the property?”

### **Relevant Statutory Provisions**

7. To answer the question posed by the Valuation Tribunal, it is necessary, in the first instance, to consider the relevant provisions of the Act of 2001: -

(i) Section 15(1) provides: -

“(1) Subject to the following subsections and sections 16 and 59, relevant property shall be rateable.”

(ii) Section 19(1) provides: -

“The Commissioner [the appellant] ... may make an order (in this Act referred to as a ‘valuation order’) specifying a rating authority area as being an area in relation to which the Commissioner proposes to appoint an officer... to organise and secure the carrying out of a valuation of every relevant property situate in that area...”

(iii) “*Relevant property*” is defined in Schedule 3 in the Act of 2001: -

“Relevant Property

1.—Property (of whatever estate or tenure) which falls within any of the following categories and complies with the condition referred to in *paragraph 2* of this Schedule shall be relevant property for the purposes of this Act:

(a) buildings,

(b) lands used or developed for any purpose (irrespective of whether such lands are surfaced) and any constructions affixed thereto which pertain to that use or development,

...

(i) easements and other rights over land...”

(iv) The condition referred to in para. 2 of Schedule 3 is: -

“The condition mentioned in *paragraph 1* of this Schedule is that the property concerned—

(a) is occupied and the nature of that occupation is such as to constitute rateable occupation of the property, that is to say, occupation of the nature which, under the enactments in force immediately before the commencement of this Act (whether repealed enactments or not), was a prerequisite for the making of a rate in respect of occupied property, or

(b) ...”

### **Application of relevant Statutory Provisions**

8. The first question that has to be addressed is whether the outdoor seating area where the street furniture is situated is a "*relevant property*". The respondent has a licence over this outdoor area and pays a fee in respect of this to Dublin City Council. On foot of this, the respondent can exclude others from using the outdoor seating area and confine its use to its own customers. It therefore follows that, in my view, the outdoor seating area satisfies the definition of "*relevant property*" under Schedule 3 of the Act of 2001.
9. The next question that has to be addressed is whether the occupation by the respondent is "*rateable occupation*".
10. Mr. David Dodd BL, on behalf of the appellant, referred the Court to a number of authorities on the issue of "*rateable occupation*". Firstly, Mr. Dodd referred to the following extract from Keane's *The Law of Local Government in the Republic of Ireland* (1982) at p. 283: -

"In England, there is no statutory definition of the word 'occupation'; but by judicial decision, four essential ingredients of rateable occupation in English law have emerged:

- (1) There must be *actual* occupation.
- (2) The occupation must be *exclusive*.
- (3) The occupation must be of *value* or *benefit* to the occupier.
- (4) The occupation must again *not* be for too *transient* a period."

On this point, Barron J. in *Iarnród Éireann v. Commissioner of Valuation* (unreported, High Court, 27 November 1992) considered that first, there must be actual occupation; secondly, that it must be exclusive for the particular purposes of the possessor; thirdly, that the possession must be of some value or benefit to the possessor; and, fourthly, the possession must not be for too transient a period.

11. It seems to me that the respondent's occupation of the outdoor seating area where the street furniture is situated comes within the stated requirements for rateable valuation. Under the licence agreement there is actual occupation which is exclusive to the respondent. Only customers of the respondent may use the area. It follows from this that the said outdoor area is "*of some value or benefit*" to the possessor and there was no suggestion that the possession was only for a transient period. In the case stated there is specific reference to the evidence of Mr. Eamon S. Halpin, valuer for the respondent company, who accepted, under cross-examination, that street furniture is an enhancement and stated that this was reflected in the rent.
12. In its decision, the Valuation Tribunal found as a fact that there were a number of inconsistencies in the way that the "*right to street furniture*" was treated for rating purposes by the Valuation Office and found as a fact that the appellant (the respondent) had offered a number of comparisons in close proximity to the subject property that had been valued with no addition for street furniture. It was acknowledged by Mr. Dodd that "*anomalies*" can arise in the valuation list but, if found, should be corrected. In my view,

even if anomalies exist, the Valuation Tribunal is bound to apply the provision of the Act of 2001.

**Conclusion**

13. By reason of the foregoing, in answer to the question of law posed by the Valuation Tribunal, I will adopt the answer proposed by the appellant, which is as follows: -

“The Valuation Tribunal was erroneous in point of law in finding that the right to street furniture should not be included in this valuation in light of the provisions of the Valuation Act 2001. The right to street furniture and the area occupied by way of outdoor café are relevant property within the meaning of Schedule 3 and as a relevant property is required to be valued in accordance with section 19 of the Valuation Act.”

14. The parties may make written submissions to the Court within fourteen days on any further orders that are required, including the matter of costs.