

THE HIGH COURT

[2005 No. 276 SS]

IN THE MATTER OF THE VALUATION ACT 1852 TO 1988 AND IN THE MATTER OF THE VALUATION OF OFFICES AT MAP
REFERENCE: BLOCK 1, WEST PIER BUSINESS PARK, DED; (DUN LAOGHAIRE SALTHILL), DUN LAOGHAIRE, CO. DUBLIN
APPEAL NO. VA01/3/040

BETWEEN

MARCONI COMMUNICATIONS OPTICAL NETWORKS LIMITED

APPELLANT

AND
THE COMMISSIONER OF VALUATION

RESPONDENT

Judgment of Mr. Justice de Valera delivered on the 13th day of March, 2007.

1. This judgment arises from a case stated by the Valuation Tribunal pursuant to the provisions of s. 5 of the Valuation Act 1988, on the application in writing of the respondent to this appeal before the Valuation Tribunal who is dissatisfied with the Tribunal's determination in the above entitled proceeding as being erroneous in point of law for the opinion of the High Court.
2. The main point of issue between the parties before the Valuation Tribunal was whether the ratepayer was in beneficial occupation of the premises within the meaning of the Valuation Acts 1838 – 1988.
3. The opinion of the court was sought as to:
 1. Whether the Tribunal was correct in determining that the appellant was not liable to rates on its premises on the basis that it was not in occupation of the premises for the purposes of the Valuation Acts.
 2. Whether in determining that the appellant was not in occupation for the purposes of the Valuation Acts the criteria in determining such occupation on the basis of whether the appellant was forced to remain in occupation and would not have done so if it could have made a free market decision was the correct criteria for such determination.
 3. Whether the Tribunal was correct in determining that the premises ought not to have been valued as a complete unit on the basis that the premises were not completed to the satisfaction and business requirements of the appellants herein.
4. The decision of the valuation Tribunal was issued on the 7th February, 2002 and sets out:
 - a) The subject of appeal.
 - b) Valuation history.
 - c) Grounds of appeal.
 - d) The findings of the Tribunal.
5. The Tribunal found as follows:

“In the light of the evidence and the conclusions of the Tribunal in relation to the evidence the Tribunal is of the view that the appellant's property was not in rateable occupation for two reasons. Firstly, such use as was being made of the premises was, as indicated by the Tribunal in this judgment, one which was essentially forced, which was not the result of a free market decision and was the result of what was essentially a late defect in the building, which if known at the commencement of the actions of the appellant would probably have led to different consequences and certainly would have led them not to be willing tenants in any usually accepted sense of the term. The Tribunal is also persuaded by the last submission of the appellant's counsel Mr. Hickey, that only part of the property was being used and only part of the property was actually fitted out. In view of the fact of the Harper Stores decision would indicate that beneficial occupation is to be determined with the particular needs of the appellant in mind, that when the premises was not fully fitted out it appears to the Tribunal that the premises ought not to have been valued as a complete unit on the basis that it was completed to the satisfaction and business requirements of the appellant. On that basis the Tribunal decides that the valuation should be struck out.”
6. I am satisfied that the Tribunal was correct in “determining that the appellant was not liable to rates on its premises on the basis that it was not in occupation of the premises for the purposes of the Valuation Acts”. I am further satisfied that the Tribunal was correct in its determination that the appellant was “not in occupation” as provided for in the Valuation Acts in that it would not have remained in occupation had it not been forced to do so and been unable to make a free market decision to cease to so occupy. I am further satisfied that the Tribunal was correct in determining that the premises ought not to have valued as a complete unit on the basis that the premises were not completed to the satisfaction of business requirements of the appellants.
7. In reaching its conclusions in the appeal against the Commissioner of Valuations decision the Tribunal was referred to, *inter alia*, the decisions in:

Harper Stores v. The Commissioner of Valuation [1968] ILR 173

Carrigaline Hotel V.A. 99/3/013

Wyeth Medica Ireland (for Polaroid Ireland Limited) VA 94/2/006

Arbuckle Smith and Company Limited v. Greenock Corporation Appeal Cases 813.

8. I accept the appellant's submissions arising out of the decision by Hamilton C.J. in *Henry Denny and Sons (Ireland) v. The Minister for Social Welfare* [1998] 1 I.R. 34 as adopted by Kelly J. in *Premier Periclase Limited v. Commissioner of Valuation* (Unreported, High Court, Kelly J. 24th February, 1999):

"They (the courts) should be slow to interfere with the decisions of expert administrative tribunals. Where conclusions are based on an identifiable error of law or an unsustainable finding of fact by a Tribunal such conclusions must be corrected. Otherwise it should be recognised that Tribunals which have been given a statutory task to perform exercise their functions as is now usually the case with a higher degree of expertise and provide coherent and balanced judgments on the evidence and arguments heard by them it should not be necessary for the court to review the decision by way of appeal or judicial review"

9. And:

"There is no doubt but that the Valuation Tribunal is the type of body which Hamilton C.J. had in mind when expressing the views which I have just quoted from his judgment in the *Denny* case... the court should be slow to interfere with its decisions and should do so only on the basis of an identifiable error of law or an unsustainable finding of fact."

10. In this matter I accept that the finding of the Tribunal:

"In the light of the evidence and the conclusions of the Tribunal in relation to the evidence the Tribunal is of the view that the appellant's property was not in rateable occupation for two reasons. Firstly, such use as was being made of the premises was as indicated by the Tribunal in this judgment, one which was essentially forced, which was not the result of a free market decision and was the result of what was essentially a late defect in the building, which if known at the commencement of the actions of the appellant would probably have led to different consequences and certainly would have led them not to be willing tenants in any usually excepted sense of the term. The Tribunal is also persuaded by the last submission of the appellant's counsel, Mr. Hickey, that only part of the property was being used and only part of the property was actually fitted out. In view of the fact that the *Harper Stores* decision would indicate that beneficial occupation is to be determined with the particular needs of the appellant in mind, that when the premises was not fully fitted out it appears to the Tribunal that the premises ought not to have been valued as a complete unit on the basis that it was competed to the satisfaction and the business requirements of the appellant. On that basis the Tribunal decides that the valuation should be struck out."

11. I am satisfied that the Tribunal was entitled, and was correct, in finding that the circumstances of the appellant's occupation of the premises created a situation similar to that set out in the *Harper Stores* case and the Tribunal was correct in its application of the decision in that matter.

12. Therefore the questions posed by the Tribunal in the case stated are answered as follows:

1. Whether the Tribunal was correct in determining that the appellant was not liable to rates on its premises on the basis that it was not in occupation of the premises for the purposes of the valuation Acts.

Answer: Yes.

2. Whether in determining that the appellant was not in occupation for the purposes of the Valuation Acts the criteria in determining such occupation on the basis of whether the appellant was forced to remain in occupation and would not have done so if it could have made a free market decision was the correct criteria for such a determination.

Answer: Yes.

3. Whether the Tribunal was correct in determining that the premises ought not to have been valued as a complete unit on the basis that the premises were not competed to the satisfaction and business requirements of the appellants herein.

Answer: Yes.