

**THE HIGH COURT**

**[2014 No. 232 J.R.]**

**BETWEEN**

**NEAL SWEENEY**

**MCELHINNEY FASHIONS LIMITED**

**APPLICANTS**

**AND**

**MEATH COUNTY COUNCIL, THE COMMISSIONER FOR VALUATION AND JUDGE GRAINNE MALONE**

**RESPONDENTS**

**JUDGMENT of Mr. Justice McDermott delivered on the 19th of April, 2016**

1. The first named applicant, Mr. Sweeney, states that he was the beneficial owner of the second named applicant company McElhinney Fashions Ltd. These proceedings concern two properties. The first is a shop occupied by McElhinney Fashions Ltd. and known as Lot 9B Castlelawns, Trim, Co. Meath. The second property is one in respect of which the occupier is registered as Mr. Pat McElhinney, an uncle of the first applicant and situated at 11 Castlelawns, Trim, Co. Meath which is also described as a shop and yard. Both properties have been the subject of rateable valuations and are identified on the valuation list now operative in respect of properties in Co. Meath as Property No. 1554269 with a valuation of €266.64 and Property No. 1554209 with a valuation of €31.74 respectively. These valuations were carried out prior to the passing of the Valuation Act, 2001 and appear on the current valuation list pursuant to s. 43 of the 2001 Act.

2. Meath County Council has claimed rates in the amount of €80,484.83 in respect of both premises and makes that claim against McElhinney Fashions Ltd. The proceedings in relation to that claim are pending before the District Court at Trim, Co. Meath.

3. The applicants seek the following reliefs:-

- (1) An order of certiorari declaring the valuation of McElhinney Fashions Ltd. premises at Main Street, Athboy, Co. Meath by Meath County Council null and void;
- (2) An order directing Meath County Council to require the Commissioner for Valuation to assess the rates on the second named applicant upon current rental income and valuation not historical rental income and valuation;
- (3) An order directing the Commissioner for Valuation to carry out valuation or revaluation of all the properties in the rateable jurisdiction of Meath County Council; and
- (4) An order prohibiting Meath County Council from proceeding with the prosecution scheduled to be heard before the District Court against the second named applicant in respect of the rates payable on the two premises.

4. The first named applicant represented himself during the course of this hearing and the court permitted him to have the assistance of a McKenzie friend. The first applicant also sought to represent the second named applicant a limited liability company which, the court was informed, is presently in liquidation. The liquidator took no part in these proceedings. A second property is registered in the name of Mr. Pat McElhinney and it does not appear that either of the applicants has any interest or basis upon which to challenge valuations in respect of that property. An issue, therefore, arises as to the locus standi of the applicants to move this application to which I will return.

5. The applicants claim that the Commissioner of Valuation has failed to comply with the requirements of the Valuation Act, 2001 insofar as the Commissioner has failed to revise the valuation list applicable to the two properties within a period of five to ten years of the entry into force of the 2001 Act.

**Valuation Act, 2001**

6. Part 5 of the 2001 Act provides for the valuation of properties throughout the State. S. 19(1) provides that the Commissioner, after consultation with the Minister for the Environment and Local Government and the Rating Authority concerned:-

"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 of the Commissioner under subs. (2) to organise and secure the carrying out of a valuation of every relevant property situate in that area ..."

Section 19(2) provides that as soon as may be after the making of a valuation order, the Commissioner shall appoint an officer to organise and secure the carrying out of the valuation of every relevant property situated in the rating area specified in the order.

7. Section 20(1) provides:-

"(1) A valuation order shall specify one date by reference to which the value of every relevant property, the subject of the valuation mentioned in the order, shall be determined.

(2) The date so specified shall not be later than the date of the making of the valuation order."

8. Section 21 provides:-

"(1) A valuation order shall specify—

(a) a date (in this Act referred to as the 'publication date') on which the Commissioner proposes to cause to be published under section 23 a list comprising every relevant property that has been the subject of the valuation mentioned in the order, and the value of that property as determined by that valuation...

(2) Such a list shall be known, and is in this Act referred to, as a 'valuation list'.

(3) The date so specified shall not be later than 3 years after the date of the making of the valuation order. ..."

9. Section 23 provides:-

"(1) On the relevant publication date, the Commissioner shall cause to be published the valuation list in respect of the relevant properties to which the valuation order concerned relates.

(2) Before that date, the Commissioner shall give notice, in such manner as he or she considers appropriate, of the fact that that list will be published on that date.

(3) On being so published, the valuation list shall –

(a) replace the existing valuation list or, as appropriate, the valuation list last previously published under this Part that relates to the same rating authority as the first-mentioned list relates to, and

(b) have full force for the purposes of that rating authority making rates on properties situate in its area by reference to it."

10. Section 25 provides:-

"(1) It shall be the duty of the Commissioner to exercise the powers conferred on him or her by subs. (1) and (2) of s. 19 from time to time in relation to each rating authority area so that the result referred to in subs. (2) is achieved.

(2) The result mentioned in subs. (1) is that a period of not less than 5 years and not more than 10 years elapses between the date on which any valuation list in relation to the area concerned is caused to be published under s. 23 and the date on which the next subsequent valuation list in relation to that area is caused to be so published."

11. Section 43 deals with the existing valuation list applicable to properties prior to 2001 including the two properties the subject matter of these proceedings. Section 43 provides:-

"(1) Notwithstanding the repeal by section 8 of the enactments specified in Schedule 1, an existing valuation list for a rating authority's area and the value of each property appearing thereon shall, subject to any amendment thereof made in accordance with the provisions of this Act, as applied by s. 44, and any apportionment of the value under subs. (3), continue in force in relation to that area for all purposes until the date on which a valuation list is caused to be published under section 23 in relation to that area."

12. The applicants submit that the rateable valuations that presently apply to the two properties are invalid in that the Valuation Act, 2001 required that a valuation list be prepared by the Commissioner of Valuation under Part 5 of the Act in respect of the County of Meath within five to ten years of the coming into force of the Act. It is submitted that this obligation arose under s. 25 of the Act and that no such list having been produced the list preceding the 2001 Act is rendered void and/or of no legal affect. The second respondent submits that the obligation to exercise its powers under s. 25 of the Act are only engaged after the valuation list has been published under s. 23. It is submitted that prior to this any list which pre-dates the commencement of the Act remains in force until the new valuation list is published in accordance with s. 23. The second respondent relies upon the provisions of s. 43 quoted above which specifically provides for the continuation in force of the valuation list previously applicable in advance of the publication of a new valuation list under s. 23 in respect of a relevant area.

13. Valuation lists have been completed for a number of areas in the country. However, the valuation process has not commenced in respect of Co. Meath. An order under s. 19 (1) has not been made by the Commissioner and consequently a valuation list has not been published in respect of Co. Meath. Therefore, it is submitted that the Commissioner is not currently subject to the time-frame imposed by s. 25 (2) for the revaluation of properties in Co. Meath. I am satisfied that this is so. There is nothing in the Act to suggest that the provisions of s. 25 apply. It is clear that the Commissioner is vested with a discretion as to whether an order will be made specifying that a rating authority area is one to which he intends to appoint an officer under s.19(2), to organise and secure the carrying out of the valuation of every relevant property situated in that area. Until that process is initiated and completed, the previous valuation list which existed and was drawn up prior to the commencement of the 2001 Act continues to apply. Section 21 clearly provides for the time-scale within which the valuation list must be prepared following the making of the valuation order under s.19. It is only upon the publication of the valuation list under s. 23 that it replaces the pre-existing valuation list compiled prior to the 2001 Act: s.23(2) provides that this list will take effect and replace "the valuation list previously published under this Part". Section 25(2) is clearly applicable to a review of the valuation list made under s. 23. Thus, following the publication of a valuation list under s. 23, a valuation order must be issued in respect of the same area within a period of not less than five years and not more than ten years of its publication or the publication of the next subsequent valuation list in relation to that area. I am satisfied that s. 25 applies therefore, from the publication of the first valuation list under s. 23. It, in turn, can only come into existence on completion of the work to be carried out pursuant to a valuation order made under s. 19. The making of that order is entirely within the discretion of the Commissioner.

14. There is nothing in the statute to suggest that the five to ten year period applies and commences to run from the date upon which the Act comes into force or the date of the valuation list prepared and published prior to 2001. On the contrary, following the making of an order under s. 19, the Commissioner has a three year period within which to publish a valuation list for the relevant area: there is no time limit applicable to the making of an order under s.19(1) or the appointment of an officer by the Commissioner under s.19(2). There is no order under s. 19(1) in force in respect of Co. Meath and the second named respondent is therefore not obliged to specify the date on which a valuation list must be published within the period of three years provided under s.21(3). Consequently, the pre-2001 list remains in force pursuant to s. 43 of the Act. I am satisfied that the Commissioner is not in breach of the obligations imposed under s. 25 or that it has any application to the facts of this case.

15. The properties, the subject matter of these proceedings, are already included in a pre-2001 valuation list. As noted, under s. 43, that valuation list continues in force for that area "for all purposes" until a valuation list is caused to be published under s. 23. An application for a revision of the valuation of any property may be made, in accordance with Part 6 under s.27 and s. 28(3) and (4) of the 2001 Act, if there has been "a material change of circumstances which has occurred since a valuation under s. 19 was last carried out...". Section 44(1) and (2) extends the revision powers to valuations carried out under the repealed provisions prior to the 2001 Act. Section 44(1) provides that Part 6 applies in respect of the existing valuation list and under s. 44(2) to "a valuation under the repealed enactments, or a revision of such a valuation under those enactments...last carried out in relation to properties situate in the rating authority area". Thus, a valuation list compiled under a repealed pre-2001 enactment or a revised valuation under such an enactment may be the subject of a revision application, prior to the creation of a first s. 23 list under the new legislation.

16. The "material change of circumstances" applicable to a consideration of such an application are set out in s. 3 of the 2001 Act, as follows:-

- "(a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or
- (b) a change in the value of a relevant property caused by the making of structural alterations or by the total or partial destruction of any building or other erection by fire or any other physical cause, or
- (c) the happening of any event whereby any property or part of any property begins, or ceases, to be treated as a relevant property, or
- (d) the happening of any event whereby any relevant property begins, or ceases, to be treated as property falling within Schedule 4, or
- (e) property previously valued as a single relevant property becoming liable to be valued as 2 or more relevant properties, or
- (f) property previously valued as 2 or more relevant properties becoming liable to be valued as a single relevant property."

17. No such application for a revision of valuation has been made in respect of either property by either of the applicants.

18. I am satisfied that the existing pre-2001 valuation list is in full force and continuing effect. Furthermore, any property included on the pre-2001 valuation may be the subject of an application for a revision of valuation, if that is thought to be appropriate under the criteria set out above. The applicants' submission that the Commissioner of Valuation has failed to comply with the requirements of s. 25 of the Valuation Act is rejected. The court, therefore, refuses the order of certiorari sought on the grounds that the valuation of the properties are null and void.

19. The evidence is that the revision of a valuation of an individual property on an existing list is carried out by reference to the properties which appear on the valuation list relating to the same rating authority area as that within which the property is situate. Reference is made to other properties of a similar type described as the "tone of the list" method. The property is valued by reference to the previous values of comparable properties appearing on the list. Any person dissatisfied with a decision of the Commissioner in respect of such a decision may appeal to the Valuation Tribunal. The applicants claim that there have been several changes made to the properties which have resulted in a change in their market value and which have not and cannot be reflected in the valuation of the properties as presently valued to their detriment.

20. The 2001 Act provides that the "value" of a relevant property is to be determined by estimating the "net annual value" of the property which means the rent for which, one year with another, the property might, in its actual state, be reasonably expected to let from year to year on certain assumptions being made. However, if a revision is sought under ss. 27 and 28(4), the determination must be made by reference to the values as appearing on the valuation list relating to the same rating area of other properties comparable to the applicant property. Neither a change in the market value of the property nor a decrease in the value of the business operated from it, are relevant to a revision of an individual entry on the valuation list. Though market factors may be taken into account when a new valuation list is published in respect of Co. Meath in the future under s. 23, the "value" of a property, a revision undertaken before the establishment of a first s. 23 list under s.28(4) (as amended by s.44), may only be determined by reference to "net annual value" calculated under s. 49 of the comparable properties. Such a revision excludes current prevailing market conditions from the assessment as to do otherwise would be to unfairly discriminate against other properties included on the valuation list and, therefore, other rate payers within the area. This would undermine the "tone of the list" methodology which is based on a comparison of similar properties on the existing list. Thus, Mr. McElhinney's assertion that the properties in issue were valued in 2006 as worth €3,500,000 but are now only worth €750,000 is not relevant to a revision that might be sought pending the introduction of the s. 23 list. I am satisfied that the provisions of ss. 48 and 49 allow for a fair revision of the valuations of these properties and other properties in the area.

### **Locus Standi**

21. An issue has been raised in respect of the locus standi of the applicants in bringing this application. The first property, No. 1554265, is said in the existing certificate of valuation to be occupied by the second applicant. The court was informed that the second applicant is in liquidation. Under the 2001 Act, parties have found status and entitlement. An "occupier" as defined by s. 3 means "in relation to property (whether corporeal or incorporeal), every person in the immediate use or enjoyment of the property: an 'interest holder' means "in relation to property, a person, other than an occupier of the property, who holds an interest in the property".

22. Under Part 5, concerning the valuation of properties, an occupier must be furnished with a "valuation certificate" prior to the publication of the new valuation list under s. 23. An occupier and/or interest holder may apply for a revision of the valuation attaching to the property under s. 28 (3) whether such a valuation is pre or post the 2001 Act. The first applicant claims to be the beneficial owner of the second named applicant. He is concerned that if the second applicant is found liable to pay the rates in the proceedings pending before the District Court against the second applicant, he will be made personally liable for the rates due. His concern is that he may be held liable for fraudulent or reckless trading under the Companies Act, as director of the company. That is an entirely speculative and separate matter from the issues arising in these proceedings. I am satisfied on the evidence that the occupier of the property is the second applicant in respect of whom, as occupier, the valuation has been made and is also the defendant in the District Court proceedings for the recovery of the rates levied. I am not satisfied that the first applicant has locus standi either as an "occupier" or "interest holder" under s. 3 or as a director and shareholder.

23. The first applicant has no entitlement to initiate or represent the second applicant in these proceedings. It is well settled that a

director or other officer or servant of the company may not represent a limited liability company in court proceedings (*Battle v. Irish Art Promotion Centre* [1968] I.R. 252). The Supreme Court accepted that on rare occasions there may be exceptions to the strict application of that rule where it would work a particular injustice (*In the Matter of Application for Orders in Relation to Costs and Intended Proceedings by Stella Coffey & Ors* [2013] IESC 11), I am not satisfied that any exceptional circumstances that would justify a departure from the normal rule had been established in this case. Furthermore, I am now told that the company is in liquidation. I am not satisfied that the first applicant has any role in the conduct of proceedings on behalf of the second applicant in these circumstances. The issue in relation to the rates payable by the company, if any, is one for the liquidator as is the defence of any proceedings brought against the company.

24. The second property, No. 1554209, is said to be occupied by an uncle of the first applicant, Mr. Pat McElhinney, as set out in the certificate of valuation. I do not see any basis upon which either applicant has locus standi to initiate proceedings in respect of this property either as an "occupier" or "interest holder" or on any other basis.

25. I am, therefore, satisfied that the first applicant has no basis upon which to initiate or conduct these proceedings. I do not consider him to be open to injury or prejudice or to be in real or imminent danger of being adversely effected by the present state of affairs which exists in relation to the valuation of the two properties. Furthermore, he is not entitled to initiate or conduct proceedings on behalf of the second applicant now in liquidation. The second applicant is the subject of District Court proceedings arising out of the rate set in respect of the pre-2001 valuation certificate and would, of course, be affected by an adverse ruling of the District Court that the company is liable to pay those claims. However, these proceedings are not properly initiated or constituted before this Court as the company is not represented by a solicitor on record. In addition, the right to pursue to maintain these proceedings lies in the liquidator as does the defence of the claim for rates in the District Court. Therefore, I am satisfied that the applicants' claim as presently constituted may not be pursued by the first applicant in the second applicant's name or on its behalf or by the company.

### **Delay**

26. It is submitted that these proceedings were not initiated within a period of three months from the date when grounds for the application first arose as required by O. 84, r. 21(1) of the Rules of the Superior Courts. The central issue in this case concerns the alleged failure by the second respondent to appoint an officer under s. 19 for the purpose of facilitating the compilation and publication of a valuation list under s. 23 of the Act, or a revision of the old valuation list. It is claimed that ought to have been done within a period of five to ten years from the date of commencement of the 2001 Act. The Act was commenced by ministerial order on 2nd May, 2002, under the Valuation Act 2001 (Commencement Order) 2002 (S.I. No. 131/2002) under s. 2 of the Act. Allowing for a period of ten years from the date of commencement in 2002, the applicant had three months after the expiration of ten years in the absence of the publication of a new valuation list within which to commence these proceedings. They did not do so and no explanation has been offered as to why proceedings were not commenced within that period. Though the court has jurisdiction to entertain an application for the enlargement of time under O. 84, r. 21(3), no such application is made. Indeed, the applicants state that because there is a continuing breach of obligation by the respondents, time cannot be regarded as having expired under the rule. I do not accept this proposition. The applicants' grounds upon which they now move arose, were known and were open to them some four years ago. I am satisfied that this application has not been brought within the time required under Order 84, rule 21(1).

27. Furthermore, the order of certiorari in respect of the certificate of valuation relates to valuations which were made pre-2002 in respect of both properties. No challenge is made to the propriety of the making of those valuations at that time. The order of certiorari seeks to declare the valuations void and this should more properly have been the subject of a claim for declaratory relief. However, I am satisfied that under either heading the claim must fail.

28. The relief sought against Meath County Council is misconceived. The Council has no function in directing the second respondent in the exercise of its independent powers and functions.

### **Conclusion**

29. I am, therefore, satisfied for the reasons set out above, that there is no legal or factual basis upon which to grant any of the reliefs claimed. The application is dismissed.