LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
RATES (NORTHERN IRELAND) ORDER 1977
IN THE MATTER OF AN APPEAL
VR/3/2014

BETWEEN

ROBERT MAYERS – APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: 2A Corporation Street, Enniskillen

PART 2 - COSTS

Lands Tribunal – Henry Spence MRICS Dip Rating IRRV (Hons)

Background

1. This appeal concerned the rates liability of a property at 2A Corporation Street, Enniskillen ("the reference property") during the period 9th August 2013 to 14th December 2014 ("the relevant period") and in particular the use and occupation of the reference property during that period.

2. Mr Mayers' ("the appellant") case was that the reference property was entitled to exemption from rates liability for the relevant period due to the fact that it was "a church, chapel or similar building occupied by a religious body and used for the purposes of public religious worship". As such he considered it should be exempt under Article 41(2)(b)(i) of the Rates (Northern Ireland) Order 1977.

3. The Commissioner of Valuation ("the respondent") rejected the appellant's claim for exemption as he did not consider the appellant had established that the reference property was occupied by a "religious body". There were two aspects to the respondent's submissions:

i. The respondent disputed the very existence of any religious body and made reference to the absence of any evidence such as a trust instrument, articles and memorandum of association, a constitution or any other document creating, or evidencing the existence of the alleged body.

ii. The respondent further submitted that, even if such a religious body did exist its alleged occupation of the reference property lacked the necessary degree of exclusivity for rateable occupation because of the degree of control by the owners.

4. The appeal was heard on 8th September 2015 and in its decision dated 6th October 2015 the Tribunal dismissed the appellant's appeal. The Tribunal's decision is summarised at paragraph 20:

> "…As they (the religious body) did not have exclusive occupation they could not therefore be the rateable occupiers of the reference property during the relevant period. The Tribunal considers that at all times the registered owners were in paramount control of the premises and the presumption was therefore, as outlined in Hollywell Union, they were the rateable occupiers…".

Procedural Matters

5. The Tribunal considered the issue of costs by way of written representations. Mr Mayers provided a submission on behalf of the registered owners. Mr Donal Lunny BL provided a submission on behalf of the respondent.

Position of the Parties

6. Mr Mayers considered that the matter to be ruled on at hearing was the issue of rates exemption for "religious bodies" and he had never been made aware of the "rateable occupation" issue. He submitted that he had been prepared for the "religious body" issue but as "rateable occupation" had not previously been raised he was not prepared and as such he should not be liable for costs. The appellant also contended that: "I was not at any time made aware there were any costs which could be awarded whichever way the case went. At no time did you (the Tribunal) mention I could be liable for any costs.".

7. Mr Lunny referred the Tribunal to rule 33(1) of the Lands Tribunal Rules (Northern Ireland) 1976 which conferred a broad discretion upon the Tribunal in respect of costs:

> "33.-(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919 applies and subject to paragraph (3) the costs of and incidental to any proceedings shall be in the discretion of the Tribunal, or the President in matters within his jurisdiction as President."

8. This broad discretion was considered in a Business Tenancies case, Oxfam v Earl (BT/3/1995) and Mr Lunny considered the following extracts from the decision in that case to be relevant in relation to the subject reference:-

   i. "The Tribunal must exercise that discretion judicially and the starting point on the question of costs is the general presumption that, unless there were special circumstances, costs follow the event, i.e. that in the ordinary way the successful party should receive its costs." [page 8]

   ii. "The next question for a Tribunal is whether there were special circumstances which would warrant a departure from that general rule. But these must be circumstances connected with the proceedings, for example, to reflect an unsuccessful outcome on a major issue." [page 8]

   iii. "After having determined all issues other than costs, the Tribunal will hear the parties on costs. In coming to a decision it will begin by considering whether or not there was a loser. At this stage, if there was an issue of fault or principle, it does not matter whether a loser was wholly unsuccessful or achieved a near miss, he was still the loser. But, if there was no issue of fault nor principle, and the outcome was a draw, or close to one, the Tribunal will not generally consider either party to have lost. Unless there are good reasons for a special award, such as extravagant or unsatisfactory conduct of the proceedings (including the role of expert witnesses) or failure on an important issue, costs will follow the event so 'the loser pays all'." [page 18]

9. Whilst it may be arguable that a rating appeal concerned with the valuation of a hereditament constituted "no fault nor principle" litigation, Mr Lunny considered that the subject appeal was of a very different nature to a valuation appeal. The appellant contended that the reference property should be exempt from rates and the respondent contended the opposite. There was no range of possible outcomes along a sliding scale, such as there might be in a valuation appeal or rent review. Rather, Mr Lunny considered that this was a binary outcome case: exempt or not exempt; victory or defeat.

10. In the circumstances Mr Lunny submitted that the general rule should prevail and the loser (i.e. the appellant) should be ordered to pay the winners costs.

11. In so far as precedent beyond the Oxfam case may be considered relevant, Mr Lunny also referred the Tribunal to Larne Enterprise Development Company v The Commissioner of Valuation (VR/6/1995) which he considered to be closely analogous to the instant appeal. In this case the appellant was ordered to pay the respondent's costs when the appeal, in which the appellant had argued that it was entitled to exemption from rates on charitable grounds, was dismissed by the Lands Tribunal.

12. In all of the circumstances the respondent sought an order that the appellant should pay its costs in the reference, such costs to be taxed in default of agreement.

Discussion

13. The appellant submitted that he had "not at any time been made aware that there were costs which could be awarded …". The Tribunal, however, refers to the following mention notes which were recorded on file by the Registrar.

    i. Mention of 26th February 2015 – "…you should be aware there is a risk of costs should you lose…"

    ii. Mention of 13th April 2015 – Mr Mayers asked "Would there be any costs involved?". The Tribunal responded "If you lose the Commissioner may pursue costs …"

The Tribunal therefore does not accept the appellant's argument that he had not been made aware of the possibility that costs could be awarded against him.

14. The appellant also submitted that he had not been aware of the "rateable occupation" issue prior to the hearing and as such he was unprepared for it to be raised, although he failed to make this point at the hearing. The issue of "rateable occupation" was however detailed in Mr Lunny's skeleton argument, which had been forwarded to the appellant on 28th August 2015, some 11 days prior to the hearing, although the appellant denied having received this document. The appellant did, however, confirm that he received the respondent's trial bundle, which contained Mr Lunny's skeleton argument on 7th September 2015. The Tribunal does not therefore accept that the appellant had not been aware of this issue prior to hearing. The Tribunal does accept, however, that this issue had not previously been raised by the respondent until its inclusion in Mr Lunny's skeleton argument of 28th August 2015, which he received on or before 7th September 2015.

Conclusion

15. The Tribunal agrees with Mr Lunny this was not a "no fault nor principle" case and in the ordinary way costs should follow the event and the winner should be awarded its costs. However, as the issue of "rateable occupation" had not been raised with the appellant until he was forwarded Mr Lunny's skeleton argument on 28th August, the Tribunal awards the respondent its costs in the reference from 7th September 2015.

ORDERS ACCORDINGLY

13th January 2016

Henry M Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland