

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2015] UKUT 0499 (LC)

UTLC Case Number: RA/85/2014

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – Procedure – VO barred from participating in VTE proceedings for failure to serve a statement of case on time but sent an observer to the hearing – whether VO was subsequently entitled to appeal to the Upper Tribunal – the VO had not “appeared” at the hearing for the purposes of reg 42(2)(a) of the Valuation Tribunal for England (Council Tax and Rating Appeals)(Procedure) Regulations 2009

**IN THE MATTER OF AN APPEAL FROM A DECISION OF THE VALUATION
TRIBUNAL FOR ENGLAND**

BETWEEN:

**TAISSA WASSILJEW-JONES
(Valuation Officer)**

Appellant

AND

DONE BROS. (CASH BETTING) LIMITED T/A BETFRED

Respondent

**Re: Tote Park,
Green Street,
Wigan,
Lancashire
WN3 5DQ**

Her Honour Judge Alice Robinson

Determination on Written Representations

© CROWN COPYRIGHT 2015

The following cases are referred to in this decision:

Electricity Supply Nominees Limited v Sharma (Valuation Officer) [1985] 2 EGLR 173, CA

DECISION

Introduction

1. In these proceedings David Grace of the Valuation Office Agency (“VO”) seeks to appeal against a decision of the Valuation Tribunal for England (“VTE”) dated 8 October 2014 (subsequent to the Notice of Appeal the VO became Taissa Wassiljew-Jones but nothing turns on this). The VO was the respondent in the proceedings before the VTE. The appellant before the VTE and respondent in these proceedings is Done Bros. (Cash Betting) Limited trading as Betfred (“Done Bros”). Done Bros had sought an amendment to the rateable value of premises at Tote Park, Green Street, Wigan, Lancashire WN3 5DQ which was opposed by the VO as a result of which the case had been referred to the VTE as an appeal.

2. Done Bros have taken a preliminary point namely that the VO is not entitled to appeal to the Tribunal having been barred from participating in the VTE proceedings. Both parties made written representations on that issue and by a letter dated 10 December 2014 the Registrar decided that the VO was entitled to appeal. Thereafter Done Bros requested that decision be reconsidered by a Judge of the Tribunal pursuant to rule 4(3) of The Tribunal Procedure (Upper Tribunal) Rules 2010 (SI 2010 No. 2600) (“the 2010 Rules”) and applied for an extension of time in which to do so pursuant to rule 5(3).

3. This is the Tribunal’s decision on that application for a reconsideration of the issue as to whether the VO is entitled to appeal (“the preliminary issue”).

4. The VO’s representations on the preliminary issue are dated 2 December 2014. The VO has chosen to make no further representations following Done Bros request for a reconsideration. Done Bros’ representations on the preliminary issue are dated 18 November and 4 December 2014. The application for a reconsideration was accompanied by a copy of an Advice from Daniel Kolinsky of counsel dated 26 January 2015. Neither party requested that the reconsideration be considered at a hearing and accordingly it is being determined on the basis of the parties’ written representations.

Background

5. The factual background can be shortly stated. The VTE decision paragraphs 3 and 4 record that the VO failed to submit a statement of case within the deadline set out in the Standard Directions. In consequence the VO was automatically barred from taking any further part in the proceedings by virtue of rule 10 of the Valuation Tribunal for England (Council Tax and Rating Appeals)(Procedure) Regulations 2009 (SI 2009 No. 2269) (“the VTE Regulations”) and paragraphs 10 and 11 of Practice Statement A7-1. An application to the VTE to lift the bar was unsuccessful. In consequence the VO played no part in the hearing before the VTE on 25 June 2014.

6. By virtue of the Local Government Finance Act 1988 Schedule 11 paragraph 8, the procedure on an appeal to the VTE including who is entitled to be heard is to be set out in regulations. These

are the VTE Regulations. Paragraph 3 of the VTE Regulations identifies who are the parties to any appeal which in the case of an appeal under regulation 13 of the Non-Domestic Rating (Alterations of Lists and Appeals)(England) Regulations 2009 (SI 2009 No. 2268) means the appellant, the VO and certain other specified persons not relevant for present purposes.

7. The combined effect of rules 10(1) and 10(7) of the VTE Regulations is that, where a party other than the appellant fails to comply with a direction that stated that failure to comply would lead to the barring of that party from taking any further part in the proceedings, that party is automatically barred from taking any further part in the proceedings subject to a right to apply for the bar to be lifted.

8. Regulation 13 of the VTE Regulations makes provision for the appointment of representatives. If a party appoints a representative that party must give the VTE written notice of the representative's name and address, regulation 13(2). A number of consequences flow from this in terms of notification to other parties and service of documents. In addition:

“(6) At a hearing, a party may be accompanied by another person... whose name and address has not been notified under paragraph (2); and that person may act as a representative or otherwise assist in presenting the party's case at the hearing.”

9. An appeal may be made against a decision of the VTE by

“any party who appeared at the hearing or, if the appeal was disposed of by written representations, who made such representations” regulation 42(2)(a)

10. The VO says that a representative of the VO attended the hearing, though did not participate, which is considered sufficient to preserve a right of appeal. Done Bros case is that, the VO having been barred from taking any further part in the proceedings before the VTE, s/he did not “appear” at the VTE hearing within the meaning of regulation 42(2)(a). The physical presence of an observer is insufficient, the VO had no right to participate in the appeal and therefore could not “appear” for these purposes and to permit such a party to appeal would be illogical. The decision relied upon by the Registrar, *Electricity Supply Nominees Limited v Sharma (Valuation Officer)* [1985] 2 EGLR 173, CA, in fact supports Done Bros arguments.

Decision

11. In my view it would be appropriate to consider the substance of the preliminary issue – whether the VO is entitled to appeal – before deciding the application to extend time for the Registrar's decision to be reconsidered by a Judge. For the reasons which follow, in my judgment the VO did not “appear” at the VTE hearing for the purposes of regulation 42(2)(a) of the VTE Regulations.

12. The VO was undoubtedly a party to the VTE proceedings. By virtue of regulation 2(3)(d) any reference to a party in the VTE regulations includes the VO. Regulation 10 which provides for striking out or the barring of participation refers to the barring of a “party” and gives the party a right

to apply for the bar to be lifted. Further, sub-paragraph (8) does not state that the person ceases to be a party, simply that the VTE “need not consider any response or other submission made by that party.”

13. However, the right to appeal under regulation 42 is not given to a “party” but to a party who has “appeared” at the hearing. A party can appear in person or by a representative. There is no suggestion that the VO appeared personally at the VTE hearing. Further, there is no evidence that the VO appointed a representative for the purpose of regulation 13 who attended the hearing. The VO’s letter does not state the name of the “representative” who attended the hearing nor is there any evidence that written notice had been given of that person’s details as required by regulation 13(2). This is not a case which falls within regulation 13(6) because the “representative”, whoever it was, did not accompany the VO.

14. Even if it could be said that a person is entitled to appear by a representative where the requirements of regulation 13 are not complied with, the VO’s decision does not record any appearance or attendance of any representative on behalf of the VO. Indeed, it appears that until the VO’s letter dated 2 December 2014, no one was aware that the VO had sent any observer to the hearing. In my judgment, a person cannot “appear” at a VTE hearing by a representative who does not make themselves known as such but who attends anonymously as an observer.

15. This approach is consistent with the decision of the Court of Appeal in the *Electricity Supply Nominees* case. There the person who attended the local valuation court on behalf of the local authority made herself known and informed the court that she represented the local authority. Her name and the fact that she was representing the rating authority were noted in the court’s decision. To use of the language of Sir John Donaldson MR:

“there must be something on the facts which distinguishes the case of [X] having an overweening interest in rating affairs and attending a local valuation court out of pure personal curiosity and that of [X] attending a local valuation court as a representative of [the rating authority].” *Electricity Supply Nominees* at p.175C

There is nothing on the facts of this case to show that the person who attended for the VO was doing so as a representative of the VO as opposed to in a personal capacity. The fact that in this case, X cannot even be named, only serves to emphasise the point.

16. In these circumstances it is not necessary for me to decide whether a party who has been barred from participating in a VTE appeal can “appear” at the VTE hearing for the purposes of regulation 42(2)(a). Although there are detailed submissions in support of that argument in the Advice from counsel for Done Bros, there are no submissions on behalf of the VO which address the point and I do not consider it would be appropriate to decide a potentially important point of principle which is not necessary to determine the preliminary issue.

17. Turning to the question of whether an extension of time should be granted for the application for a reconsideration, the decision of the Registrar is dated 10 December 2014. Rule 4(3) of the 2010 Rules requires any application for a decision by a member of staff to be considered afresh by a Judge to be made within 14 days after the date on which the Tribunal sends notice of the decision. Assuming the Registrar’s decision was sent the day it was made, 14 days would expire on Christmas

Eve and many offices are closed in the period between Christmas and New Year. Further, the Registrar's decision referred to case law which had not been previously mentioned by either party and on which it was reasonable to take legal advice. In my view there good reasons for extending time in this case.

18. For the above reasons I grant an extension of time for the application for a judge to reconsider the Registrar's decision, and on that reconsideration I hold that the VO did not "appear" at the VTE hearing for the purposes of regulation 42(2)(a) of the VTE Regulations and is not entitled to appeal against the VTE decision.

19. This decision is final on all issues other than the costs. A letter inviting submissions on costs accompanies the decision.

Dated: 16 September 2015

A handwritten signature in black ink, appearing to read "Alice Robinson". The signature is cursive and somewhat stylized.

Her Honour Judge Alice Robinson

ADDENDUM ON COSTS

20. In a letter dated 24 September 2015 the respondent applied for its costs of the appeal on the grounds that it has been successful. A Schedule of Costs was provided totalling £6,607.80. In a response dated 1 October the VO did not resist a claim for costs in principle but submitted that not all of the items in the Schedule of Costs should be allowed. Specifically, the costs could have been mitigated by the respondent seeking a stay pending determination of the preliminary issue that the VO had no right of appeal and all costs accrued after the Registrar's decision dated 10 December 2014 do not result from the appeal but are a result of the apparent error by the Registrar.

21. I agree that as the respondent has succeeded in the appeal, in principle it should be entitled to its costs pursuant to rule 10(6)(d) of The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 (2010 No. 2600 as amended). As to quantum, the respondent's case in the appeal was that the VO had no power to appeal, see its letter dated 18 November 2014. This is the preliminary issue which has been resolved in its favour. However, resolution of that legal issue did not require consideration of the merits of the appeal and in my judgment the costs

associated with the inspection on 16th December could have been avoided if the respondent had applied for a postponement of compliance with the usual directions pending resolution of the preliminary issue. I therefore do not consider that the respondent is entitled to recover those costs. These are described in the Schedule of Costs as having been incurred on 16 and 18 December 2014 in the sums of £875, £31.50, £375 and £250 which total £1,531.50.

22. However, I consider that the rest of the costs have been incurred in connection with activities which were reasonably necessary to pursue the appeal. This includes service of a Respondent's Notice which was received by the Tribunal. The fact that some of the costs were incurred seeking a reconsideration of the Registrar's decision does not alter that. The VO could have conceded and withdrawn the appeal at any stage and the position is little different to a situation in which a party successfully appeals an adverse first instance decision. The successful appellant is normally awarded the costs of the whole proceedings, not just the successful appeal. The VO accepts that the claim appears reasonable in terms of the activities undertaken and does not challenge the hourly rate claimed.

23. On another point, the VO brought the appeal and it should pay the determination fee.

24. Accordingly the VO is ordered to pay the respondent's costs of the appeal in the sum of £5,076.30 (£6,607.80 – £1,531.50).

Dated: 1 December 2015

A handwritten signature in black ink, appearing to read 'Alice Robinson', written in a cursive style.

Her Honour Judge Alice Robinson