

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

POUNDWORLD LTD

in relation to

Shop, 22/24 Princes Square, East Kilbride, Glasgow
G74 1LJ

This appeal was called for hearing at a meeting of the Committee of the Lanarkshire Valuation Appeal Panel on 1st May 2013. Mr Robert J. Preston, of Preston Tait, appeared for the Appellants. Mr Steven Lander presented the case for the Assessor.

This was a new occupier appeal. Mr Preston had written to request a continuation because it appeared a re-survey was required due to differences in floor area measurements. The Assessor objected to this. Mr Lander moved that the appeal be dismissed under Regulation 10(3) of the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) 1995 (S.I. 1995 No 572) on the basis that the Appellants had not complied with the terms of Regulation 10(1) of the said Regulations.

Regulation 10(1) provides that:-

- (1) An Appellant shall, not later than 35 days before the date set for the hearing, furnish to the Assessor a written statement specifying – (a) the grounds for his appeal; and (b) if the appeal relates to the valuation entered in the Valuation Roll, the valuation which the Appellant considers should be entered into the Roll and the grounds on which that valuation is arrived at.

Regulation 10(3) provides that:-

If an appellant fails timeously to-

- (a) furnish the statement required in paragraph (1); or

the assessor may apply to the Committee to have the appeal dismissed and the Committee may grant that application if it thinks fit.

Mr Lander submitted that the purpose of the requirement within the Regulations for certain information to be supplied was to give fair notice of the case to be taken, so as to ensure the Assessor was not taken by surprise and the general body of ratepayers were not prejudiced as a result. The Assessor placed his Practice Notes on the Scottish Assessor's Association website and referred to these in the notices which he issued.

The importance of adhering to the Regulations had been emphasized by the Lands Valuation Appeal Court in two cases. In *Tesco Stores Ltd v Fife Assessor* 2011 SC 316, Lord Hardie had stated "Regulation 10 of the Procedure Rules imposes obligations upon both an appellant and an assessor to furnish to his opponent information specified in that regulation within a designated time scale. Failure by an appellant to provide the information timeously to the assessor may result in the assessor applying to the Valuation Appeal Committee to have the appeal dismissed, in which event the Committee may grant the application if it sees fit to do so." In *Assessor for Lanarkshire Valuation Joint Board v Jane Norman Ltd & Ors* [2012] CSIH 50, the Lord President had stated that "a Committee might justifiably show indulgence to a party litigant who had an imperfect understanding of the Regulations, but in the absence of a cogent justification I can see no reason why it should excuse professional practitioners for a failure to observe them. I remind Committees of their power under regulation 10(3) and of the comments of this court in *Tesco Stores v Fife Assessor* at paras [17]-[19], and [24]-[26]."

A citation had been issued in the present appeal on 6th February 2013. By letter dated 26th March 2013, the Appellants' agents had lodged grounds of appeal which stated that "the zone floor areas may be overstated at a total of 1157sms", and provided certain other grounds of appeal. The Assessor contended that these did not comply with the Regulations as there was no alternative value and no statement of the grounds on which it had been arrived at. On 8th April 2013, the Assessor wrote to the Appellants' agents intimating his intention to move for dismissal of the appeal for failure to comply with Regulation 10(3). No further grounds were received.

The Assessor had attempted to discuss the appeal with Mr Preston, but on each occasion Mr Preston had said he was not in a position to do so as he had not yet surveyed the property. He then said that although he had not surveyed the property he had obtained scale plans and believed there to be differences. By letter dated 26th April 2013, he stated he had managed to get detailed 1-100 plans of the premises and detailed the alleged differences. The letter went on to say "As we are in the no discussion stage, I will be asking the tribunal to postpone the hearing so that these figures can be checked out." This information was not new as the grounds letter had previously referred to a difference in floor area measurements.

As regards Mr Preston's submission that he had recently spent time out of the office on jury service, and had not yet been able to carry out a survey, Mr Lander stated that the citation had been issued 84 days prior to the hearing and Mr Preston had been on jury service for a week.

Mr Preston explained that his clients were an expanding business and their practice on moving in was to carry out alterations to their own set design. The initial letter of appeal submitted on 5th March 2012 had made reference to the alterations which had taken place and the excessive floor area, and in a second letter he had proposed an alternative

figure of £200,000, then followed this up with a paragraph in standard terms setting out how this had been arrived at. He had then submitted grounds on 26th March 2013 in which he stated the floor area was overstated at a total of 1157sms. This was the nub of the appeal.

On 12th April 2013, he had been called to act as a juror in Perth Sheriff Court in a criminal trial. He had not returned to the office until 22nd April 2013. He had rung the Assessor to say that for this reason his timetable had got out of sync, but he now had detailed plans and would endeavour to survey the premises that week. The Assessor had responded saying they were now in the 10 day non-discussion period. Mr Preston's position was that he was that they had supplied grounds and an alternative valuation; they were not contending the rate, they were just asking for a continuation to establish floor areas. In reaching its decision, the Committee should take into consideration the loss of time in the office as a result of jury service. These shops had a lot of high shelving. Before he surveyed them, Mr Preston tried to get plans, which were detailed and helpful. His laser could only get through certain areas.

When asked when the plans had been received, Mr Preston stated he could not be sure but it was some time after the citation date. He also conceded that he had not been aware that he had to submit the information required in terms of the Regulations after the citation date.

The Committee having adjourned to consider the submissions made, took the view that the Appellants were obliged to comply with the terms of Regulation 10(1) by providing a statement of grounds for the appeal, an alternative valuation and the grounds on which this had been arrived at. Mr Preston had been unaware of the requirement in terms of the Regulations for these to be lodged after the citation had been issued. As a professional practitioner, Mr Preston ought to have been aware of this. Mr Preston had failed to comply with the Regulations in that he had not provided with his statement of grounds an alternative valuation and the grounds on which this had been arrived at. The Committee considered whether it should excuse him for his failure to do so and extend the time for compliance but considered he had offered no cogent justification for doing so. It considered whether to grant a continuation to give Mr Preston more time to survey the subjects but took the view that he had had adequate time to do this already notwithstanding the time spent on jury service. He was been unable to say when he had received the plans, but if he had not received these in sufficient time prior to the hearing he should have carried out a survey in any event. The Committee accordingly refused the Appellants' motion for postponement and granted the Assessor's motion for dismissal under Regulation 10(3).

The Committee accordingly dismissed the appeal.

2 May 2013