VALUATION TRIBUNAL SERVICE

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# Valuation In Practice

VALUATION TRIBUNAL SERVICE

## Valuation Tribunal Service (VTS) - Tony Masella- New Chief Executive

On 1 February 2010 Tony Masella became the new Chief Executive for the VTS. In recommending him for the post, Anne Galbraith, Chairman of the VTS Board stated "the panel was of the view that he brought extensive experience of the service and a strong network of excellent relationships with important stakeholders. He also has a track record of delivering successfully within the organisation."

Before being the Acting Chief Executive, Tony had been the VTS' Corporate Director from 1 April 2004; prior to which he was also the Clerk of the London North East Valuation Tribunal for a significant number of years. Everyone wishes Tony well.

## New Legislation

### The Non-Domestic Rating (Small Business Rate Relief) (Amendment) (England) (No 2) Order 2009 SI 3175

From 1 April 2010 a small business that receives small business rate (SBR) relief on the 2005 rating list can continue to receive it on the 2010 list, without reapplying, providing they remain eligible for it.

Properties of £6,000 Rateable Value (RV) or below will receive 50% relief. Those of more than £6,000 RV but not over £12,000 RV will receive relief on a sliding scale (of 1% less for each £120 RV they are over £6,000 RV).

The thresholds for properties to have their rates calculated using the SBR multiplier from 1 April 2010 are:

- Properties of up to £17,999 RV outside of London.
- Properties of up to £25,499 RV within London.

In looking at whether a property should receive SBR, additional properties of up to £2,599 RV can be ignored, providing the combined RV of the properties still fall below the thresholds given above.

### The Non-Domestic Rating (Rural Settlements) (England) (Amendment) Order 2009- SI 3176

From 1 April 2010, the RV thresholds for this relief will change, as follows:

- For a sole shop, general store or post office- £8,500 RV.
- For a sole petrol station or public house- £12,500 RV.

The threshold for discretionary rate relief will also increase to £16,500 RV.

### The Non-Domestic Rating (Stud Farms) (England) (Amendment) Order 2009- SI 3177

From 1 April 2010, the RV to be disregarded for stud farms will be changed to £4,200 RV.

### Empty Property Rate Relief

The threshold below which properties are exempt from empty rates will change to £2,600 RV from 1 April 2010. In addition, as a temporary measure, the Government will legislate to extend the empty rate relief exemption to properties up to £18,000 RV for 2010/11 only.

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**Special points of interest:**

- *HC decision-guidance for VTs on need to give reasons for the decision—Page 5*
- *VT decision—deletion of offices incapable of beneficial occupation—Page 5*
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# Superior Court decisions

*From 1 June 2009 any appeal against a Valuation Tribunal decision has been dealt with by the Upper Tribunal (Lands Chamber), formerly known as the Lands Tribunal (LT): For the purposes of the summaries below, any reference to a decision made by the Lands Tribunal up to 1 May 2009 and by the Upper Tribunal from 1 June 2009, will be abbreviated as LT.*

**Leda Properties Ltd v Howells [2009] RA/62/2006**

The Lands Tribunal (LT) considered whether a Computer Centre and Premises, which had been entered in the 2000 rating list at £200,000 RV, had become:

- obsolete/incapable of beneficial use, such that its entry should be deleted; or
- only capable of being used as storage, so its RV should be reduced to £90,000.

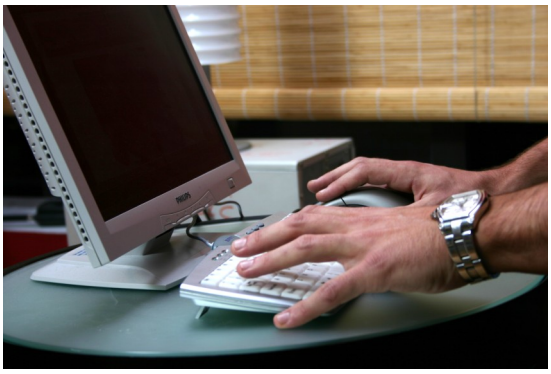
The appeal property had been purpose built for the Ministry of Defence (MOD) in 1973/4 and used by them until 1993. After the MOD had left the property it was leased to other computer firms until 31 January 2000. Therefore, at the Antecedent Valuation Date (AVD) of 1 April 1998 the appeal property was being used as a computer centre and its 1998 rent had been determined by an independent expert at £239,745 per annum.

At various times throughout 2000 to 2002 expressions of interest were received for the whole or part of the premises from several potential occupiers. However, the appeal property had remained vacant post February 2000.

The ratepayer argued that the appeal property had become obsolete and whilst the proposal had been sought on the grounds of a deletion, he considered that it could still be open for them to request a lower RV should his request for a deletion fail.

George Bartlett QC, President of the LT agreed with the Wiltshire Valuation Tribunal (VT) and the Valuation Officer (VO) that the request for a lower RV went beyond the scope of the proposal and so could not be considered: Unlike *Golgate Cricket Club v Doyle (VO) [2001] RA 21* it was not a case where a proposal could be treated as encompassing two grounds.

The ratepayer's argument that the appeal property was obsolete was



based on the following:

- Due to the fast moving nature of IT, any building more than 10-15 years old would be considered obsolete by the IT industry: The design of the building was wholly inappropriate (being large open office space) and it was in the wrong location.
- The last IT occupiers had vacated to more modern facilities in Bristol.
- The cost of refitting the premises, which had been calculated by a prospective tenant in 1991 to have been £1,726,312, would have been prohibitive.

In contrast, the VO pointed out that the appeal property had actually been occupied until the start of 2000. The past occupier had not exercised the break clause that had existed in September 1998 and had continued to pay a rent of more than £200,000 per annum. Therefore, he asked how it could have become obsolete by September 2000?

Whilst the VO accepted that mainframe computers were costly items of plant, these attracted no value, given that they were not named items under the Plant and Machinery Regulations. Similarly, the air handling and cooling plant present were not rateable. Therefore, although the cost of replacing this would be considerable, it was not a matter that would affect the appeal property's assessment.

In dismissing the appeal, Mr Bartlett QC agreed with the VO that there was no doubt that there had been demand for the appeal property at the AVD. He considered the ratepayer had failed to establish that the appeal property was incapable of beneficial use. He also noted that most of the costs would either fall under the normal repairing assumptions required by the tenant to keep the appeal property in a state of reasonable repair or be disregarded as non-rateable plant.

**Allen (VO) v English Sports Council/Sports Council Trust Company [2009] RA/4/2006 & RA/7/2006**

This Upper Tribunal (Lands Chamber) (LT) case concerned the National Sports Centre at Bisham Abbey, in Buckinghamshire, which provided sporting facilities for elite athletes, as well as the wider community.

Originally the facilities at Bisham Abbey had been included in the rating list at £360,000 RV. However, after receiving a grant from the National Lottery, the

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existing sports centre had been demolished and a larger centre built on the site.

Both parties accepted that the appeal property should be valued by the contractor's basis. However, the dispute centred on:

1. Whether the English Sports Council (as contended by the VO) or the Sports Council Trust Company (as contended by the agent) occupied the appeal property.

2. If an adjustment should be made at stage 5 to reflect that the works were grant funded.

3. Whether any allowance should be made to reflect flood risks.

George Bartlett QC, the LT President and AJ Trott FRCS heard the appeal. Whilst the arguments regarding who was considered to be in occupation were documented, the LT did not address this issue, as they considered it to be irrelevant to the main issue in dispute, i.e. the treatment of the grant.

It was explained that the cost of the works totalled £10 million of which 93.9% was provided by lottery funds. The ratepayer suggested that if it were not for the grant, the appeal property would not have been altered in this way and therefore a 93.9% allowance should be made at stage 5. In contrast, the VO pointed out that if the ratepayer's argument was accepted, the RV placed on the appeal property would be £117,350 below that which existed previously in its unimproved state. He considered the possibility that something might not exist, without a grant, would not affect the rating hypothesis. The benefits of occupation were the same, regardless of the amount of grant.

On the issue of flooding, the ratepayer said that the hypothetical tenant would reduce his rental bid by 10%. One hole of the golf course flooded regularly and due to previous insurance claims made on its new buildings, the appeal property now had an insurance excess of £20,000.

The VO considered there was no evidence that the flood risk to the appeal property had increased since the AVD. As the flooding was only really known to have affected the golf course, any allowance could not exceed the value contributed by this element of the assessment. Therefore, he proposed that only a reduction of £1,750 RV should be made for flooding, this being 5% of the golf course's value.

In its conclusions the LT noted that in many cases valued by the

contractor's method, there was no market in the general sense. Therefore, there was no justification for reducing the value on the basis that it was more than the market could bear.

The LT considered that the ratepayer had failed to address why the appeal property should be assessed at £242,650 RV, when previously he had agreed that a smaller and inferior sports centre on the same site should be valued at £360,000 RV.

The LT had regard to a number of higher court decisions including *Lavery (VO) v Leeds City Council [2002] RA 165,* where it was held that the fact 80% of the cost of building the magistrates' court had been financed by a Government grant was not a matter to be taken into account in a contractor's valuation.

Whilst in *Willacre Ltd v Bond (VO) [1987] RA 199*, the existence of a grant was taken into consideration, the LT did not feel compelled to follow this decision in the appeal property's case, noting that the value of the grant in *Willacre* amounted to just over 5% of its construction costs and went against a decision made by the same member eight years earlier. Therefore, for the reasons given the LT did not consider it was correct in law to make an allowance because of the existence of a grant.

Finally, the LT considered that the frequency of the flooding had not clearly been established and the VO's offer to reduce the assessment by £1,750 RV (5% of the value of the golf course) was reasonable. Accordingly, the LT determined a revised assessment of £478,250 RV from 1 April 2004.

**Allen (VO) v Freemans plc [2009] RA/2/2007**

A large distribution warehouse in Peterborough of 79,876m², occupied by Freemans, had initially been entered in the 2005 rating list at £1,770,000 RV. However, its assessment had been reduced to £850,000 RV following a decision made by the Cambridge VT. The Upper Tribunal (Lands Chamber) (LT) was asked to consider:

- what reliance should be placed on the rent passing under the new lease dated 29 November 2003, on which the VT decision had been based;
- the level of value that should be applied to the warehouse and other accommodation on site (issues including looking at

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# Superior Court decisions continued

at the age of the various component parts, differences in eaves height, the assessment of the first floor accommodation and quantum); and

- what disabilities should be covered by the end allowance?

In reaching a decision, the LT determined the 2003 lease on the appeal property at £850,000 per annum was not a new letting to a party fresh to the scene. Instead, it resulted from the surrender of a lease set in 1972 for a term of 99 years, which had also disregarded the value of any buildings that Freemans had placed on the site.

Details supplied showed that the new lease, for a term of 34 years, did not reflect the open market value of the land and buildings. The LT concluded that the City Council who owned the land had seen the surrender and re-grant of the lease as an opportunity to increase its income and retain a major employer in the area, whilst to Freemans it gave greater flexibility and in the long term offered a reduced rent liability. Therefore, the actual rent was of no assistance.

Even if no other evidence had been placed before the VT, the LT considered the lower tribunal had erred by not having regard to the stepped increases set at the 5 and 10 year rent reviews.

The LT noted that the appeal property was a piecemeal development that had buildings dating from 1968, 1981 and 1991. The LT therefore preferred the approach taken by the VO to place a higher value on the more modern parts, rather than assess it all at one overall rate regardless of its age. Having regard to the comparables provided by the VO, the LT was satisfied that the main space rates the VO had applied were reasonable and that no adjustment was warranted for quantum.

However, after carrying out a site inspection, the LT agreed that the appeal property had an unusually large amount of first floor accommodation. This had insufficient floor loading to allow the use of fork lift trucks, with a low ceiling height of 3.06 m and poor lift access. Therefore, the LT determined that the value of the first floor should be at 50%, as opposed to the VO (who had attached a relativity of 65%) and the agent (33%).

Finally, whilst both parties had applied 5% end allowances, the LT determined that the end allowance was applicable because it was a cramped site, of mixed age and a piecemeal development. The LT rejected the agent's contentions that, in addition to fragmentation, the

site suffered from flooding (insufficient evidence), presence of firewalls (not perceived to be a disability) and the lack of a dedicated lorry park.

**Tuplin (VO) v Focus DIY LTD [2009] RA/41/2007**

The Lands Tribunal (LT) confirmed that the appeal made by the VO should be dismissed because the decision made by Manchester South VT to hold the proposal to be valid was correct.

The question of validity had been raised by the VO because the appeal had been submitted under regulation 4A (1) (d) of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993, on the grounds the RV was shown by reason of a VT decision on another hereditament to be inaccurate. However, in this case the appeal cited a short, VT 'memo pad' decision, which had confirmed the verbal agreement that had been reached on a Big W warehouse 12 miles from the appeal property.

The President of the LT rejected the VO's suggestion that because the other decision was not a reasoned decision, it could not show that the assessment on the appeal property, another retail warehouse, was wrong. Instead, he held that it was a matter for the VT to decide whether on the facts and in the light of the valuation evidence, if the decision showed the appeal property's assessment to be inaccurate.

**Dubary (VO) v Church Council of the Central Methodist Church [2009] RA/33/2007**

The Lands Tribunal (LT) held that two rooms in a church building used as a book and coffee shop were exempt under paragraph 11 (1) (b) of Schedule 5 of the Local Government Finance act 1988, being part of a church hall, chapel hall or similar building.

The President of the LT was satisfied that the underlying purpose of the coffee and bookshop was to promote Christian religion and attendance at the church. In reaching this decision regard was had to:

- the moveable coffee shop sign and church notice board;
- the advertisements of the activities of the church within the shop;
- the evidence given by the minister of the close ties between the appeal property and church activities within the building as a whole;

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- the physical fact that the shop was part of the church/church hall building and was never shut off from it internally; and
- the situation that when closed, the shop was clearly used for church hall uses.

**Moghaddam v Hammersmith and Fulham London BC [2009] EWHC (admin) 1670**

This appeal to the High Court (HC) followed a decision made by the London SW VT to determine that the appellant was liable to pay council tax on two flats.

In reaching its decision, the HC held:

- Whilst the appellant was not a satisfactory witness, it did not reach the conclusion that she was lying.
- There was no purpose in the council suggesting that the appellant had lied about not receiving their decision giving her appeal rights to the VT; accordingly, the appeal was not out of time.
- If a full copy of the lease had been available, the VT would have been able to see that the appellant's father managed the property on her behalf.
- The VT had erred by not allowing the appellant to address the suggestion that the documents she had produced were fake or sham agreements.
- The VT had also erred in not providing more detailed reasons for its decision. Whilst the reasons given by a VT could be short and condensed, there was a need to explain why an aspect of the case had been rejected,

especially in cases where it found dishonesty or fraud.

The appeal was remitted back to the VT to determine with the recommendation that the appellant produce a chronological bungle of documents. Given the piecemeal production of the evidence, the HC held it was unsurprising that the council and VT had struggled to get to the bottom of the facts.

# Interesting VT decisions

**Non-domestic rating**

**Beneficial occupation-Office and Premises- Astor & Benton Houses, Newbury, Berks**

The appeal property in this case was two self contained office buildings that had formed a single hereditament of £332,500 RV, from 1 April 2005. The proposal submitted in January 2009 requested that the property be deleted from the rating list for the 86 days from 5 January until 31 March 2009 during which time it had undergone substantial internal works, which had rendered it incapable of occupation.

The agent explained that in order for his client's to exercise a break option in their lease, they had vacated the appeal property in December 2008 and had handed the premises over to contractors for dilapidation works to be carried out. These works had put the appeal property back to a similar state (open plan) to that at the acquisition date. A detailed schedule of works was presented to the panel, together with the estimate that the works had cost in the region of £1,040,000.

The agent referred to the case of *J Laing & Sons Ltd v Kingswood Assessment Committee & Others [1949]* and concluded that as no beneficial occupation could be made, no value should be applied to the appeal property.

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Looking at the definition of RV, the agent differentiated between a property being in disrepair and the situation where the works taking place prevented beneficial occupation. He referred to photographs he had taken of the internal state of state in February 2009, which showed that the appeal property had resembled a building site.

To further support his case, the agent referred to a settlement he had achieved on a hereditament known as Beechwood House, in which the VO had agreed to delete the property for a period of works lasting 52 days, at a cost of £40,000.

The VO explained his belief that a property could only be deleted from the rating list where it had been completely stripped back, with items such as plumbing and electrics being removed. Whilst refurbishment often resulted in upheaval and inconvenience for staff in the building, on most occasions people could work round it.

Looking at the works undertaken at the appeal property, the VO considered that some were repairs; others included an element of renewal. He drew attention to the definition of RV and to the VOA rating manual, explaining that it was to be assumed that the appeal property was in a state of reasonable repair, unless a reasonable landlord would have considered them to be uneconomic.

The VO considered that the Beechwood case was different. He saw that the works undertaken in this case (where a single building had been split to create two) had created something totally different from the previous hereditament. In contrast, the VO saw the works being undertaken at the appeal property to be more in the nature of 'upgrading' of the sort a tenant would undertake from time to time and in the example given in the VOA manual, upgrading works did not result in a property being deleted from the rating list. However, the VO agreed that had the works been completed whilst the appeal property remained occupied, it would have taken longer to complete, taking into account health and safety issues.

In reaching its decision, the panel did not consider that the works undertaken at the appeal property could have been carried out whilst staff had been present. Having regard to the VOA practice note, the panel saw parallels between Beechwood House and the appeal property, noting that after the works, the appeal property had become two separate hereditaments, separately marketed. The panel concluded that the works undertaken, which had resulted in the stripping out of plumbing, electrics and partitioning, would have rendered the buildings 'incapable of occupation' and therefore allowed the appeal.

*A full copy of this decision can be found on the VTS website: Appeal number 034014986634/165N05. It is understood that the VO has appealed against this decision to the Upper Tribunal (Lands Chamber). The photographs in this article of those of the appeal property and our thanks go to Howard Elliott of Baker Davidson Thomas for supplying them.*

**Council tax Liability**

**Sole or main residence- Military Police Officer, Kingston– Upon-Hull City Council**

The appeal concerned the decision made by the billing authority (BA) to hold the appeal property as the main resident of Mrs X's daughter, a Royal Military Police Officer, from 1 April 2008 to the present day.

In the grounds of the appeal Mrs X explained that her daughter only visited her once or twice a year, when she was on leave, for periods of one to two weeks. She also questioned whether it was correct to hold the appeal property as her daughter's main residence, given she had CILOCT payments deducted from her salary (contributions taken by the Ministry of Defence and paid to BAs, in lieu of council tax, for soldiers staying in barracks).

The BA explained that a review of Mrs X's 25% single person discount had taken place in February 2009, because her statement had conflicted with some other information they had obtained from an external agency, under Section 29 (1) of the Data Protection Act 1988. This external agency had informed the BA that the appeal property was also the usual address of Mrs X's daughter.

In response to their initial enquiries Mrs X had explained that her daughter who was in the Military Police, visited her for 1-2 weeks every 3-6 months, and had a room at the appeal property.

Over the ensuing months it had been indicated:

- If Mrs X's daughter left the army, she would stay in the spare room at the appeal property, if it was available.
- Mrs X's daughter had no possessions at the appeal property; they all remained at the barracks.

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- From July 2009 Mrs X's daughter would no longer stay at the appeal property when visiting her mum, but with friends nearby.

- Mrs X's daughter had removed her name from the register of electors from February 2009, which was the same month as when the BA had issued the Single Person Review form.

In presenting his case, the BA referred to a number of cases of High Court cases including *Bradford CC v Anderton [1991], Ward v Kingston Upon Hull CC [1993] and Doncaster BC v Stark & Stark [1997].* All of these cases held that the person's main residence remained at the marital home, where they had greatest security of tenure, despite being absent for large periods of time at sea/working in Saudi Arabia/living in barracks. Mr Stark had also been a member of the armed forces and it was held that his main residence had remained at the marital home despite CILOCT payments being taken in respect of his RAF accommodation.

The BA explained that the idea behind CILOCT payments was to ensure that the citizens within a local authority area were not subsidising armed forces accommodation, which were exempt from normal council tax charges. Those soldiers living in single accommodation paid approximately £2.70 per month. Whilst Mrs X's daughter had been in the armed forces for 10 years, the BA had only cancelled her mother's single person discount from 1 April 2008.

The representative for the appellant explained that Mrs X's daughter did not regard the appeal property as her main home and if she got court marshalled, she would not necessary return there but would consider all of her options.

The main difference between the current case and the past cases cited by the BA was that they all related to cases involving married couples and marital homes.

Mrs X's daughter had a 24 year contract with the Royal Military Police, with 14 years left to serve. She travelled around the world on duty and resided in barracks.

The bedroom at the appeal property

was merely a guest room, which was used by other people including Mrs X's grandchildren. Mrs X's daughter had no possessions at the appeal property and when she left the army her intention was to purchase her own home, possibly not even in Hull.

Mrs X's daughter was registered with a doctor and dentist at the barracks. She had no financial interest in the property nor did she make any contribution towards her keep when she had visited her mother. Whilst she did ask for her bank statement and car disc to be sent to the appeal property, this was only so that her mother could forward it on to wherever she was.

The appellant's representative concluded that in line with the Court of Appeal case of *R (Williams) v Horsham DC [2004]* the reasonable onlooker would determine that Mrs X's daughter's main residence was not at the appeal property.

In reaching its decision, the panel looked at all of the cases presented. It noted that Mrs X's daughter was single, with no security of tenure at her mother's home and in this respect was significantly different from all of the decisions reached by higher courts. Having regard to the *Williams* Court of Appeal case the panel looked at factors for and against holding the appeal property as Mrs X's daughter's main residence:

*Factors for*- she had received post at her mother's address and spent some time there when on leave.

*Factors against*- she had no security of tenure at the appeal property; she paid accommodation charges to live in barracks; she spent the vast majority of time away; she had no personal possessions at the appeal property; the bedroom she had used was a guest room, also used by Mrs X's grandchildren; she had a doctor and dentist in the army; from February 2009 she was no longer on the electoral register; and when she left the army she intended to purchase her own home, rather than return to the appeal property.

The panel concluded that the 'reasonable onlooker' in possession of the material facts would conclude that Mrs X's daughter's main residence was not at the appeal property. Accordingly, the appeal was allowed.

**Removal of 25% Carer Discount - East Riding Council**

This appeal followed the decision made by the BA not to allow a 25% carer's discount from 4 May 2008, when Mr Y had married his carer. Prior to this date, the BA had accepted that Mr Y's carer should be disregarded. However, the Council Tax (Additional Provisions Regulations for Discount Disregards) regulations SI 552 specified under part two that a carer could not be a 'disqualified relative of that person'; a disqualified relative being further defined in paragraph 4 as:

- the spouse/civil partner or people living in a relationship as partners; or

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**Removal of 25% Carer Discount - continued**

- a parent providing care for a child below 18 years old.

Mr Y explained that his grievances rested on the following:

- Despite being informed of the marriage twice, the BA had not amended his council tax bill for 18 months, which had resulted in him receiving bills for a retrospective liability.

- His wife remained his official carer and assumed the same responsibilities as she had before they had married.

- There had been no changes in his medical condition or benefits.

- The main reason for him getting married was that apart from his elderly parents, he had no next of kin. He had previously been on a life support machine and considered that if the situation should arise again, it would be unfair to ask his parents to make any decisions associated with it.

- He had read in one of the BA's brochures that it had the discretion to award local discounts, but had not done so in his case.

Through questions, it was confirmed that the BA could demand payments retrospectively.

Having considered the legislation, the panel reached the conclusion that the BA had no alternative but to remove the 25% carer's allowance once Mr Y had married his carer. Whilst it expressed sympathy and accepted that essentially there had been no significant changes in Mr Y's circumstances, his marriage meant that the carer was now his wife, who could not receive a carer's discount, as set out in the council tax legislation.

On the subject of local discounts, the panel noted that this was a matter to be determined by each individual BA and was not one over which it had any jurisdiction.

Accordingly, the appeal was dismissed.