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BANK OF BRITISH COLUMBIA et al

v.

CITY OF VICTORIA

Supreme Court of British Columbia (A761463)

Before: MR. JUSTICE E.E. HINKSON

Vancouver, September 8, 1976

Mr. M.R. Taylor for the Respondent
Mr. R. Hutchison for the Appellant

Reasons for Judgment

Pursuant to the provisions of s. 67(2) of the *Assessment Act* the Assessment Appeal Board has submitted a stated case for the opinion of the Court.

Counsel for the appellants and counsel for the respondent placed an agreed statement of facts before the Board, which statement was accepted by the Board. Those facts disclose that the respondent has assessed as "improvements" certain safety deposit boxes belonging to the appellants and located on premises occupied by them within the City of Victoria. The safety deposit boxes are of assorted sizes and are, as to the majority, rented on a yearly basis to customers of the respective appellants for the safekeeping of valuable documents and other personal property of the customers. A small minority are used by the respective appellants themselves for the storage of valuables belonging to each of them or deposited in their custody in the course of their business. The boxes are in the form of "nests" or units stacked beside and on top of each other. These boxes are located in the main safety vault of each of the appellants. The nests of safety deposit boxes are in no way affixed either to the vault or to each other, but are in position solely by their own weight.

The agreed statement of facts goes on to disclose:-

> " 9. A characteristic of the movable 'nest' style of safety deposit boxes is the ease with which such 'nests' can be moved so as to enable the bank at any time to provide without difficulty for change in quantity and type of demand by introducing and removing 'nests' of various box sizes and by re-arranging the stacks of 'nests' within the vault so as at all times to provide ease of access to those boxes for which public demand is greatest; the Appellants have in all cases adopted this style of safety deposit boxes, at the branches here in question and elsewhere, in order to take advantage of the features described in this paragraph and do in fact take advantage of such features at the branches in question. "
>
> "10. While 'nests' containing a few large boxes may on occasion become vacant and therefore available to be moved to other branches which require additional boxes of that

type, the 'nests' containing a large number of small boxes, while liable to be moved within the vault for the purpose of rearrangement, are unlikely, once put into service, to become wholly vacant again and are therefore unlikely to be moved out of the premises unless acquired in excess of eventual demand, or upon the branch itself being closed or moved, at which time the boxes, with their contents, will be taken to other premises of the bank."

The definition of "improvements" as it appears in the *Assessment Act* upon which the respondent relies in the present appeal is as follows:-

" 'improvements' includes

(i) all buildings, fixtures, machinery, structures, and similar things erected or placed in, upon, or under or affixed to land or to any building, fixture, or structure therein, thereon, or thereunder, and, without limiting the generality of the foregoing, includes aqueducts, tunnels other than mine-workings, bridges, dams, reservoirs, roads, transformers, and storage tanks of whatever kind or nature, and includes fixtures, machinery, and similar things of a commercial or industrial undertaking, business, or going-concern operation so erected, affixed, or placed by a tenant, except those exempted by regulations of the Lieutenant-Governor in Council;"

Counsel for the respondent stated that the onus was on him to show that the safety deposit boxes in question fell within the definition of improvements set out above. He contended that the safety deposit boxes are fixtures or similar things within the foregoing definition of improvements. Both counsel made reference to the dissenting judgment of Davey, J.A. (as he then was) in *Re Assessment Equalization Act Re Trans Mountain Oil Pipe Line Company Appeal* (1966) 56 W.W.R. 705. Counsel agreed that the following passage which appeared in the judgment of Davey, J.A. at p. 710 accurately describes the situation that prevails in the light of the provisions of the *Assessment Act*. He said at p. 710:-

". . . Appellant's counsel argues that the several acts do not make personal property assessable even if it falls within the definition of improvements to land, and that these tanks, not being affixed to the land, are chattels and so personal property. He contends that the Acts draw a clear distinction between real and personal property. In some respects that is so, but not for the purposes of assessment. For those purposes, the common law distinction between real and personal property seems to have been dropped for a more practical distinction between land and its improvements as defined in the Act, and chattels which are not improvements to land, thus arbitrarily cutting across the classical distinction between real and personal property."

Approaching the matter in that way, counsel for the respondent relied upon the decision in *Dominion Trust Company* v. *Mutual Life Assurance Company of Canada* (1918) 3 W.W.R. 415. The Court was there dealing with whether or not certain safety deposit boxes were part of the freehold or were merely chattels. The Court concluded that the boxes originally installed during the construction of the building were part of the freehold, but that certain other boxes placed in the building about a year afterwards were chattels. Mr. Hutchison contended that the boxes originally installed in that case, on the evidence, would be tenant's fixtures. However, he conceded, quite properly in my view, that the safety deposit boxes which are the subject of the appeal in the present matter are not tenant's fixtures. In *Stack* v. *T. Eaton Co. et al.* (1902) 4 O.L.R. 335, Meredith, C.J. said at p. 338:-

" I take it to be settled law:-

(1) That articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as shew that they were intended to be part of the land."

On the basis of the agreed statement of facts that I have set out above I conclude that there was no intention on the part of any of the appellants that the safety deposit boxes become part of the land.

Nevertheless, counsel for the respondent contended that while the safety deposit boxes are not tenant's fixtures they are similar things to tenant's fixtures, and as such fall within the definition of "improvements" in the *Assessment Act*. In support of that submission he relied upon the decision in *Northern Broadcasting Company Limited* v. *The Improvement District of Mountjoy* (1950) S.C.R. 502. Kellock, J., delivering the majority judgment, considered a statute which provided:

> "1. (i) 'land', 'real property' and 'real estate' shall include:
>
> (iv) All buildings, or any part of any building, and all structures, machinery and fixtures erected or placed upon, in, over, under, or affixed to land;"

The Court was called upon to consider whether a transformer and transmitter had been "placed" within a building so as to come within the foregoing definition. He said at p. 511:-

> "I therefore conclude that it is sufficient in the present case to bring the two articles here in question within the meaning of 'land' in the Statute, that they are heavy articles placed each in one particular spot with the idea of remaining there so long as they are used for the purpose for which they were placed upon the premises."

That decision was discussed by Wilson, J. (as he then was) in *Re Orr's Assessment* (1955) 16 W.W.R. (N.S.) 25. After discussing the *Mountjoy* decision and the decision of Blackburn, J. in *Holland* v. *Hodgson* (1872) L.R. 7 C.P. 328, Wilson, J. said at p. 43:-

> "I think that statutory enactments are to be read as made in awareness of the framework of existing law. Hence, whether the word 'placed' is to be given the special meaning assigned to it by Kellock., J., or is to be interpreted in the light of the observations of Blackburn, J., it is clearly not applicable to the cobbler's machinery, which, as stated in the case, belongs to the class of things intended to be moved about at will and which has not been set in a permanent position."

On the basis of the statement of agreed facts in the present case I reach the same conclusion with respect to the safety deposit boxes in question.

Counsel, nevertheless, contended that even if the safety deposit boxes were not fixtures placed in a building within the definition of improvements in the *Assessment Act*, upon the basis of the decision in *Dominion Trust Company* v. *Mutual Life Assurance Company of Canada, supra*, they were similar things to fixtures upon the basis that if they had been installed as the boxes were originally installed in that case, they would be regarded as tenant's fixtures and that they were therefore similar things to such fixtures. That is a novel submission in regard to the interpretation of a taxing statute. In substance what it means is that while the safety deposit boxes in question remained chattels they might have become tenant's fixtures if they had been installed by the appellants with the intention that they become part of the building and hence part of the land. I agree that the submission of counsel for the appellants that the fact that the safety deposit boxes might have become tenant's fixtures is not sufficient on the basis of the definition of improvements in the *Assessment Act* to make them assessable. In my view the important distinction is that they are similar to other safety deposit boxes but are not similar to fixtures because they remain chattels.

In the alternative counsel for the respondent contended that the safety deposit boxes were "structures". In support of that submission he referred to the definition of "structure" contained in the Shorter Oxford Dictionary, 3rd Ed. Vol II, where structure is defined, inter alia, as:-

> ". . . The mutual relation of the constituent parts or elements of a whole as determining its peculiar nature or character;"

The nests of safety deposit boxes in question have no mutual relation as constituent parts or elements of a whole and therefore do 'not come within the definition. Further, in *Cardiff Rating Authority and Cardiff Assessment Committee* v. *Guest Keen Baldwin's Iron and Steel Company Limited* (1949) 1 K.B. 385, Denning, L.J. (as he then was) said at p. 396:-

> ". . . A structure is something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation; . . . A thing which is not permanently in one place is not a structure, but it may be 'in the nature of a "structure' if it has a permanent site and has all the qualities of a structure, save that it is on occasion moved on or from its site."

If that definition is applied, clearly the nests of safety deposit boxes in question do not constitute a structure.

In the result I conclude that the safety deposit boxes in question are not "improvements" within the meaning of that term as defined in the *Assessment Act*.