ASSESSMENT COMMISSIONER

v.

WOODWARDS STORES LIMITED,

Supreme Court of B.C. (A820211) Vancouver Registry

Before: MR. JUSTICE M.R. TAYLOR

Vancouver, March 22, 23 and 24, 1982

J.E.D. Savage for the Appellant
B.J. Wallace for the Respondent

Reasons for Judgment June 24, 1982

This is one of six consolidated appeals by way of case stated from decisions of the Assessment Appeal Board raising questions concerning the assessment of chattels brought onto commercial premises as "improvements" within the meaning of the *Assessment Act*, R.S.B.C. 1979, Chapter 21, in respect of all of which I gave reasons for judgment dated May 28, 1982, setting out the basic principles to be applied.

By reasons since given in two of the cases stated, those relating to the *Daon Development Ltd.* and *The Southland Corporation* appeals, I have dealt with the application of these principles in the context of particular items, and those reasons are relevant to the decision in this appeal.

In the present case I believe the principal items concerned to be electrically operated equipment used in an automotive service station and a garment cleaning and altering operation, respectively. I may be in error in this belief, no analysis having been provided to assist in an understanding of the voluminous material annexed to the Case Stated. I proceed in these circumstances on the assumption that the decision deals with items which the Board regarded as "machinery" or "similar things", and not as "fixtures" or "structures", and which it found had not been "affixed" or "placed" in the sense in which that word is used in defining "improvements".

The decision that these things were neither "fixtures" nor "affixed" does not seem to be contested. The sole issue seems to be whether, being "machinery" they met the appropriate test of placement. I have previously described the appropriate test to be this: do they fall into the class of things which, by reason of their character, function and placement, once put in position can normally be expected to remain in that position, rather than the class of things which can generally be expected to be moved around from time to time in the ordinary course of business?

I do not understand the Board to have used that test.

The Board seems, in particular, to have been influenced in this case by the belief that the intention of the taxpayer to move items in the event that "convenience, economy, merchandizing principles or changes in the habits of customers" should dictate such a move. It seems to me that those are considerations which will almost always result in the movement of any chattel in any commercial enterprise. It seems to me that the correct test is whether the item concerned

appears, from objective evidence derived from observation of its character, function and placement, probably to fall into the first class which I have mentioned rather than the second.

For these and my previous reasons I have answered the questions contained in the Case Stated as follows:

> 1. Q. Did the Assessment Appeal Board err in applying, as the proper test of whether the items in issue were "placed" within the meaning of "improvements" as defined in Section 1 of the *Assessment Act*, R.S.B.C. c. 21. whether they were heavy articles placed in one particular spot with the idea of remaining there so long as they are used for the purpose for which they were placed on the premises?
>
> A. Yes. The Board erred, firstly, in holding that "machinery" can be found to have been "placed", within the meaning of the Act, only if it is "heavy". Weight may be evidence of the necessary degree of placement, but machinery may be found to be "placed" within the meaning of the statute even though not of substantial weight, provided that the evidence as a whole indicates that it more probably falls into the class of things which, once put in place, can generally be expected to remain in that position, than into the class of things which can generally be expected to be moved from time to time in the ordinary course of business. The Board erred, secondly, in holding that to be so "placed" machinery items must have been put in a particular location "with the idea of remaining there so long as they are used for the purpose". The particular intention of the person actually placing the item in question is not the decisive factor. The question for the Board in each case is whether the item is shown by its character, its particular function and the manner of its placement to be one which more probably falls into the first class of things mentioned above than the second. Absolute permanence of location is not necessary in order that any item be held to have been so placed. Nor can mere subjective evidence of intention of a particular owner render not assessable as an "improvement" a machine which, used in the same way in the same sort of business in the same place, would be assessable against another.
>
> 2. Q. Did the Assessment Appeal Board err in directing themselves as to the meaning of "improvements" in their reasons for decision?
>
> A. Yes. For the reasons stated in answer to Question 1.
>
> 3. Q. Is the proper test of whether an item is "placed" within the meaning of "improvements" as defined in section 1 of the *Assessment Act,* R.S.B.C. 1979, c. 21 whether the item in question improves the quality of the freehold?
>
> A. No. As stated in reasons for decision dated May 28, 1982, intention to improve the freehold is not necessary in order that an item may be found to have been "placed". within the meaning of the statute, although such an intention may be relevant in deciding whether it is assessable as a "fixture".

The decision of the Board will be remitted for reconsideration in accordance with the principles stated above and my previous decisions. Since the ultimate outcome is unclear, there will be no order as to costs.