The following version is for informational purposes only

ASSESSMENT COMMISSIONER

v.

McDONALD'S RESTAURANTS OF CANADA LIMITED,

Supreme Court of B.C. (A820516) Vancouver Registry

Before: MR. JUSTICE M.R. TAYLOR

Vancouver, March 22, 23 and 24, 1982

J.E.D. Savage for the Appellant
Miss. J. Ryan for the Respondent

Reasons for Judgment June 25, 1982

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

I have already applied those principles in deciding the cases stated at the instance of the Assessment Commissioner against decisions of the Board on the *Daon Development Corporation*, *The Southland Corporation* and *Woodward Stores limited* appeals. I refer to my reasons in those cases as part of the background to the present decision.

The principal things in issue in the present appeal appear to be items installed in the kitchens of restaurants operated by the respondent at locations in the District of Coquitlam and City of Port Coquitlam. The Board refers to these in the case stated as "items of machinery and equipment", a term of uncertain meaning because, as I have pointed out in a previous decision, "equipment" is not a term used in the definition of "improvements" in Section 1 of the *Assessment Act*. I assume that the Board has found the items in question to be "structures", "machinery" or "similar things", the expressions in fact used in the statutory definition.

In its written reasons for decision on this appeal the Board says that it has applied the principles adopted in its decision in the *Daon Development Corporation*, *The Southland Corporation* and *Woodward Stores Limited* cases. I have dealt in my previous reasons with those decisions, and have described certain errors which I believe them to disclose.

With respect to what I believe to be the particular items in dispute in the present proceedings, the Board's decision says:

> Mr. Harrison testified that the tendency today is to put much more wiring and other apparatus into the units so as to make them modular and versatile. He stated, for example, that the large or walk-in type of cooler-freezer unit is now designed as a modular unit so that it can be adjusted for use in any location being physically easier and hence less expensive to remove and install. Mr. Harrison cited an example of moving the

> entire equipment of a restaurant and setting it up in another location in a little over one working day.
>
> In respect to the location of any particular item, Mr. Harrison used a colourful phrase, that is, no location is a "final resting place." He explained that an item was put where it could best be used from time to time by the personnel on the staff and for convenience of service. Apart from movement for cleaning purposes, he said changes in positioning may flow from new design or different kinds of food being served. For example, when the appellant began emphasizing chicken products, it was necessary to make changes in the kitchen arrangement and equipment to accommodate that product.

The Board appears to have concluded, from this and other evidence, that none of the items in question had been "placed" in the sense required by the *Assessment Act* definition of "improvements".

The only way in which I think it possible to ensure, in the circumstances of this case, that my decision may not be misunderstood, is to set out, step-by-step, the process involved in determining whether or not a chattel brought onto commercial premises falls within the relevant definition of "improvements". That definition is the second contained in Section 1, and, so far as immediately relevant, it embraces:

> all. . . fixtures, machinery, structures and similar things erected or placed in, on,. . . or affixed to . . . a building.

It will be observed that definition contemplates three classes of chattels (or former chattels)-"fixtures", "machinery" and "structures", with the postscript "or similar things"-and that it specifies three methods by which such items may be associated with a building in order to become assessable as "improvements": erection, placement and affixation.

Each such item as those considered by the Board in the present case must therefore be submitted to the following inquiry:

1. *Is it a "fixture*"? A fixture may be any sort of chattel (or, more properly, "former chattel") which has been so placed in, or affixed to, the premises as to become in law part of the realty itself. If the Board, properly applying the law in that regard, were to conclude that an item constitutes a "fixture" (it seems improbable that the expression" similar thing" can have meaning in relation to a fixture) there will be no doubt that it has been so "placed" or "affixed" as to meet all the requirements of the definition of "improvements".

2. *Is it a "structure*"? If the item is not a "fixture" it can be an "improvement" for assessment purposes only if it constitutes a "structure or similar thing" or "machinery or similar thing". A structure (as is stated in my previous reasons) must be a thing "of substantial size", "built up of component parts" and "intended to remain permanently on a permanent foundation". A "similar thing" to a structure, in the context of a taxing statute, may be something having not quite, but very much, the same attributes-a "borderline" structure. In order to meet this definition of a "structure" the thing concerned must have been installed with more than the degree of permanence required in order to be "placed", and may well also have been "erected" on the premises or "affixed" thereto within the Section 1 definition of "improvements". An item properly described as a "structure" must inevitably be an "improvement".

3. *Is it "machinery"*? If neither "fixture" nor "structure or similar thing", an item may be an "improvement" if it falls within the description "machinery or similar things" ("similar things" having the connotation suggested above) and has been "affixed" or "placed" on the premises. It is in this context, therefore, that the meaning to be attached to the word "placed" acquires critical importance. A machine is to be considered "placed" within the meaning of the statute if the Board is satisfied that it more probably fits into that class of

things which, once put in position, can normally 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 normal course of business.

For practical purposes, the assessment authorities, in order to establish assessibility, bear the burden of showing that an item not specifically stated to be an "improvement" falls into one of the above three classifications.

My answers to the two questions which I am asked to deal with at this stage are as follows:

1. Q. Did the Board adopt and use the correct test of whether an item is 'placed' within the meaning of the second definition of 'improvements' in the *Assessment Act*?

A. No. If the items have properly been found by the Board to be "structures", the test will have been met. If the items have properly been found to be "machinery", the test of placement is that summarized above and set out more fully in my decision of May 28, 1982 (at pages 19 and 20).

3. Q. Does the Board have jurisdiction to determine the question of assessability of any of the items in dispute?

A. This is a question which did not arise in the proceedings before the Board, and accordingly it cannot be raised by stated case. The position taken by the Assessment Commissioner on the case stated is, in any event, such that an attack on the Board's jurisdiction to decide matters of assessability could not succeed. (See portion headed "The Issue of Jurisdiction" in reasons of May 28, 1982).

If this decision should not provide sufficient guidance from which the answer to Question 2 may be derived, I ask that counsel for the appellant make his submission on that question in writing not later than July 21, 1982, and that the respondent file its submission by August 7, 1982. The appellant may file a reply not later than August 15, 1982.

Because the outcome of the appeals remains entirely uncertain, there will be no order as to costs.