ASSESSMENT COMMISSIONER

v.

BRITISH COLUMBIA TELEPHONE COMPANY

Supreme Court of B.C. (A820390) Vancouver Registry

Before: MR. JUSTICE M.R. TAYLOR

Vancouver, March 22, 23 and 24, 1982

J.E.D. Savage for the Appellant
J.R. Lakes for the Respondent

Reasons for Judgment June 28, 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 "improvements" within the meaning of the *Assessment Act*, R.S.B.C. 1979, chapter 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 dealt with the application of those principles in decisions on cases stated in the *Daon Development Corporation*, *The Southland Corporation*, *Woodward Stores Limited* and *McDonald's Restaurants of Canada Limited* appeals. I refer to my reasons for judgment in those cases as part of the background to the present decision.

The items in issue in the present case include computers, kitchen equipment and duplicators. I am not entirely sure that the Board has found all these items to be "machinery", but I make that assumption for the present purposes. The Board says of the items in question (at page 5 of its decision) that the evidence "does not support a finding either that the appellant put any of such items in a particular place with any idea or intention that it would remain there so long as used for the purpose for which brought to the premises, or, for that matter, any idea or intention of permanence whatsoever". The Board indicates that it has applied the principles described in its decisions on the *Daon Development Corporation*, *The Southland Corporation* and *Woodward Stores Limited appeals*. The Board says (at page 5):

> It cannot, therefore, on the Board's understanding of the applicable principle, be said that any of such items are "placed" within the meaning of the said statutory definition. The Appellant may have hoped that it would not have to move a duplicator in Class Five so far from its original position that a new connection to the exhaust system would be necessary. However the facts do not otherwise support the kind of intention envisaged by the relevant principles of law, and any reasonable doubt as to the existence of that kind of intention must be resolved in favour of the Appellant.

Not being aware of the factual background, I have had difficulty in understanding the meaning of these last two sentences, and must base my decision on the Board's statement that it has in fact applied in the present case the same principles as it applied in the earlier decisions mentioned.

For the reasons set out in my previous decision, I answer the questions with which I am to deal now as follows:

> (a) 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 upon the premises?
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> 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, and in the same place, would be assessable as against another.
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> (b) Q. Did the Assessment Appeal Board err in directing themselves as to the meaning of "improvements" in their reasons for decision?
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> A. Yes. For the reasons stated in answer to Question (a).
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> (d) 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. For reasons stated in answer to Question (a).
>
> (g) Q. Does the Board have jurisdiction to determine questions 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 it accordingly cannot be raised by stated case. But 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.)

The appeal will be remitted to the Board for reconsideration in accordance with the principles referred to in this decision. If the parties are unable to agree on the answers to Questions (c), (e) and (f) in the light of this and my previous decisions, counsel for the Appellant is asked to provide his submission thereon in writing not later than July 21, 1982, and the submission of the Respondents is to be filed by August 7, 1982. The Appellant may file a reply not later than August 15, 1982.

Since the ultimate outcome of the appeal remains entirely uncertain, there will be no order as to costs.