**ASSESSMENT COMMISSIONER**

**v.**

**CANADIAN PACIFIC AIRLINES**

Supreme Court of B.C. (A820553) Vancouver Registry

Before: MR. JUSTICE M.R. TAYLOR

Vancouver, March 22, 23 and 24, 1982

J.E.D. Savage for the Appellant
B.W. Hoeschen for the Respondent

**Reasons for Judgment** June 29, 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 since applied those principles in deciding the cases stated at the instance of the Assessment Commissioner against the decision of the Board in the *Daon Development Corporation*, *The Southland Corporation*, *Woodward Stores Limited*, *McDonald's Restaurants of Canada Limited* and *British Columbia Telephone Company* appeals. In the course of my reasons of May 28, 1982, and those given in dealing with these other cases stated, I believe I have already dealt with the issues which arise on the present appeal. I refer to those reasons as the background to this decision.

I understand the items in issue on this case stated to be computers located on premises of the respondent in the District of Richmond. The Board has found them to be "machinery" but that they are neither "fixtures" nor have they been "affixed" or "placed" within the meaning of the second definition of "improvements" contained in Section 1 of the *Assessment Act*. In concluding that the computers have not been "placed", the Board has applied the same principles which it adopted in its decision on the *Daon Development Corporation*, *Woodward Stores Limited* and *The Southland Corporation* appeals.

In my reasons for judgment on the cases stated from those decisions of the Board I have already indicated the manner in which, as I believe, the Board erred in stating the applicable principles.

Referring in its decision in the present case to the items in issue-those listed in "Class One" -the Board says (at pages 7 and 8):

> Council for the Respondent placed great reliance on the fact that the Appellant incurred expense estimated to be in excess of $500,000 in preparing the premises for the computer equipment. Mr. N. Campbell, Manager of Computer Services for CP Air, outlined these preparations which included removal of carpeting, covering windows, and

installing raised flooring and fire protection and door security systems. Does it, however, follow that because these steps were taken at considerable expense, the computers and related equipment were installed with any idea of permanence or with an intention of improving the freehold so as to be a fixture. Such tenant's improvements to the building would serve any computer equipment which was substituted for the original equipment by reason of advances in technology equally as well as the computer and other equipment originally brought to the premises.

It does not, therefore, follow that the improvement of the premises evidences an intention to put the items in issue in the premises with any idea of permanency. Rather, the installation of the raised floor, which made the items in the room completely mobile in facilitating movement when new items were added to the room, or at any time for convenience of operation, coupled with the evidence as to the knowledge of the Appellant that many of the items would shortly become obsolete and required to be replaced with newer more functional and economic items, and that other items would be moved to accommodate those changes, persuades the Board that no such intention existed in the corporate mind of CP Air at any time. Once the room was set up, such changes and movement were not only physically easy, but economic as well, since the new technology improved the capacity of the system to perform the tasks required by the business. Indeed, the facts in evidence confirm that the intention of CP Air was to put in its premises the most functional and economic apparatus that would serve its needs from time to time.

On the basis of these findings the Board has concluded that none of the computer items had been "placed", within the meaning of the definition, and that none therefore constituted an "improvement". In so doing it seems to me that the Board may have been influenced by purely subjective evidence of intention which, for reasons previously stated, ought not to prevail.

For reasons given here and in my earlier decisions mentioned, I answer those questions posed by the Case Stated with which I am asked to deal at this point as follows:

(a) 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. (See the previous decisions).

(c) Q. Does the Board have jurisdiction to determine the question of assessability on 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 is remitted to the Board for reconsideration in accordance with the principles stated in my previous decisions. If this and my previous decisions on the consolidated appeals do not provide guidance from which answers to Questions (b) and (d) can now be derived by the parties, I ask that counsel for the Appellant provide a submission in writing on those questions not later than July 21, 1982, and that the Respondent file its submission on or before August 7, 1982. The Appellant may file a reply not later than August 15, 1982.

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