ANGUS CATERING (1982) LTD.
QUADRA VENTURES INDUSTRIAL LODGE (TUMBLER RIDGE) LTD.

v.

ASSESSOR OF AREA 27 - PEACE RIVER

Supreme Court of British Columbia (A850458) Vancouver Registry

Before: MR. JUSTICE K.M. LYSYK (in chambers)

Vancouver June 17 and 21, 1985

J.R. Lakes for the Appellants
G.B. Stanford for the Respondent

Reasons for Judgment June 25, 1985

This is a case stated for the opinion of the Court by the Assessment Appeal Board ("the board") pursuant to s. 74 (2) of the *Assessment Act*, R.S.B.C. 1979, c. 21 ("the Act") on certain questions of law. One question was required to be submitted by the appellants and five by the respondent.

1. *The facts*.

The stated case sets out, as representing the material facts relating to the questions of law, the following eleven paragraphs:

> 1. The properties on appeal are construction camps comprised of various manufactured trailer "units" used for sleeping, dining, kitchen, recreational and office purposes in the accommodation of construction workers during the construction of the townsite of Tumbler Ridge.
>
> 2. The units are manufactured complete elsewhere and are wheeled or trucked onto the sites and set on wooden blocks.
>
> 3. The units are hooked up to electricity, water and sewer; are simple and readily dismantled and may be wheeled from the site within hours.
>
> 4. The units are sited on lands leased for only the period of construction.
>
> 5. Regarding Angus Catering (1982) Ltd., the units are leased from Atco (the owner of the units) by the operators (the appellants).
>
> 6. In respect of Quadra Ventures Industrial Lodge (Tumbler Ridge) Ltd., the units are owned by the appellant.
>
> 7. The units are moved from site to site for the purposes of affording accommodation, on a temporary basis, at construction camps.
>
> 8. On removal from the sites, the units are complete and undamaged and the lands on which they were situate suffer no damage.

9. These units are removable as the personal property of a tenant and, are therefore, chattels.

10. The Board found as a fact that the units were "placed" on the land and therefore assessable pursuant to the second definition of "improvements".

11. The Decision of the Assessment Appeal Board dated January 11, 1985 is attached hereto as Schedule "A".

(The last three paragraphs above, while not confined to material facts, are included here for the sake of completeness).

2. *The questions submitted*.

The question required to be submitted by the appellants is set out in the following terms:

1. Did the Assessment Appeal Board err in law in finding that the units which are found to be chattels are assessable as improvements for school purposes pursuant to the second definition of improvements contained in the *Assessment Act*?

The five questions required to be submitted by the respondent are set out in these terms:

1. Did the Assessment Appeal Board err in law when it held that the said improvements were not assessable for General Municipal and Provincial Taxation purposes pursuant to the *Assessment Act*, R.S.B.C. 1979, Ch. 21?

2. Did the Assessment Appeal Board err in law when it held that the said improvements were not improvements within the meaning of "improvements" for General Municipal and Provincial Taxation purposes as defined by the *Assessment Act*, R.S.B.C. 1979, Ch. 21?

3. Did the Assessment Appeal Board err when it held that the said improvements were not "buildings" within the meaning of that word as used in the definition of "improvements" for General Municipal and Provincial Taxation purposes as defined in the *Assessment Act*, R.S.B.C. 1979, Ch. 21?

4. Did the Assessment Appeal Board err when it held that the said improvements were not "structures" within the meaning of that word as used in the definition of "improvements" for General Municipal and Provincial Taxation purposes as defined in the *Assessment Act*, R.S.B.C. 1979, Ch. 21?

5. Did the Assessment Appeal Board err when it failed to find that the said improvements were either "affixed to land" or "erected on the land" as those words are used in the definition of "improvements" for General Municipal and Provincial Taxation purposes in the *Assessment Act*, R.S.B.C. 1979, Ch. 21?

3. *The issues*.

For purposes of the questions submitted, the key provisions of the Act are the two definitions of the word "improvements" contained in s. 1. The first relates to assessment for general municipal and Provincial taxation purposes, the subject matter of the five questions stated for the respondent; the second relates to assessment for other purposes, including the "school purposes" which form the subject matter of the question stated for the appellants.

It will be convenient to deal with these two definitions in the context of the questions to which they relate. Following the sequence in the stated case, I turn first to the question required to be stated by the appellants.

4. *Assessment for school purposes*.

The material portion of the definition reads as follows:

> "improvements" for purposes other than for general municipal and Provincial taxation purposes under the *Municipal Act*, *Vancouver Charter* and *Taxation (Rural Area) Act* includes
>
> > (a) all buildings, fixtures, machinery, structures and similar things erected or placed in, on, under or affixed to land or to a building, fixture, or structure in, on, under or affixed to land and, without limiting the generality of the foregoing, 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 regulation; . . . .

I have underlined the portions which, in my opinion, are critical for disposition of this issue.

The board reached the conclusion that the "units" described in its statement of material facts were "placed" on the land. It stated:

> "Placed" connotes something less than is involved in the word "affixed", so says Kellock J. in *Northern Broadcasting Company Limited* v. *The Improvement District of Mountjoy*, (1950) S.C.R. 502. The learned justice continues at page 510-
>
> > With respect to 'placed', I do not think it is used in the statute as equivalent merely to 'brought upon' so as to take in mere personal property which is intended to be shifted about at will. It involves the idea of setting a thing in a particular position with some idea of permanency. Thus, merely to bring a gas engine and portable saw upon the premises would not be to 'place' them upon the land within the meaning of the statute, any more than would be the case with a table, or a chair, or a typewriter, or similar articles.
>
> The Board finds that these units have been 'placed' on the land and are assessable. They are intended to remain continuously in this location until the end of the lease.

I agree with the thrust of this analysis. A full review of the authorities bearing on the meaning of the word "placed" in the provision of the Act presently under consideration was undertaken by Mr. Justice Taylor of this Court in *Assessment Commissioner of British Columbia* v. *Woodwards Stores Limited* (1982) 38 B.C.L.R. 152, at 159-164. The principles he extracted from those authorities are set out at pp. 164-165, from which I quote (in part):

> I conclude from these authorities that the key factor in determining whether machines or structures have been so "placed" as to render them assessable as "improvements", although not in law "fixtures", is simply whether they have been given "some permanency of position". . . .
>
> How then can it be decided whether a particular structure or machine has the necessary degree of permanence of placement to constitute it a non-fixture "improvement"?
>
> I return to the definition of "structure" to which I have already referred (at pp. 691-92). A structure, for the present purpose, is to be taken as a thing of "substantial size" which is "intended to remain permanently on a permanent foundation". It seems to me quite plain,

> therefore, that any item of equipment properly found to be a structure, if not necessarily a "fixture" , must certainly be taken to have been "placed" with the permanence necessary to render it an "improvement" for the purpose of the present statute.
>
> In relation to machinery, substantial size or substantial weight may well be evidence from which the necessary degree of permanency of placement is to be inferred. Other possible indicia of the required degree of placement include the existence of a prepared special site or resting place, service connections of a rigid character such as plumbing, difficulty of disassembly and relocation, and incorporation in a process which can only be carried on in a particular location. None of these characteristics is essential to establishment of the required degree of placement. But one or more of them may, in a particular case, be evidence from which the necessary permanence of position can be inferred, and there may be others. In every case the question to be asked is not whether the item concerned is in fact intended to be moved by the particular owner but whether by reason of its character, function and placement, as determined from all the evidence, the item concerned falls into the class of things which, once put in position can normally be expected to remain in that position, rather than falling into the class of things which can generally be expected to be moved around from time to time in the normal course of business.

The units here in question were "placed" on the land in the usual sense of that word. Ordinarily, such a unit can be expected to remain in the same location for the whole of the construction period. I am satisfied that the degree of permanency requires the conclusion that these units were "placed" on the land not only within the ordinary dictionary meaning of that word but also in the sense properly accorded to it in this definition of "improvements". In my opinion, the board did not err in law in so concluding.

I turn now to a submission advanced in the alternative by counsel for the appellants. He argued that even if the units are improvements, the board erred in law in failing to exempt them from assessment pursuant to the terms of a regulation made under the Act in 1974: B.C. Reg. 799/74 ("the regulation"). This issue is not addressed in the board's decision for good reason-no mention was made of the regulation in submissions made to the board. In these circumstances, I deal with the matter with some reluctance. It is only in an artificial sense that the board can be said to have erred on a legal question not presented to it for consideration and not identified as an issue in the case stated for the opinion of this Court. More importantly, it is highly desirable that the Court have the benefit of the board's views on a question which could prove to be significant not only here but in other proceedings.

One course of action, in such a situation, would be to remit the matter for consideration by the board. Counsel for the respondent, however, joined counsel for the appellants in urging that the issue be dealt with now and, in the interests of expedition, I shall do so.

Counsel for the appellant relies on s. 3 of the regulation, the material portion of which reads as follows:

> *Exemptions of Fixtures, Machinery, and Similar Things*
>
> 3-1 Fixtures, machinery and similar things refer to those items which as if so erected or affixed by a tenant, would as between landlord and tenant, be removable by the tenant as personal property.
>
> 3-2 All residential improvements as defined in Regulation 3-1 not used for industrial or commercial purposes shall be exempt from assessment under the Act.
>
> 3-3 Commercial and industrial improvements referred to in Regulation 3-1 but generally described as follows shall also be exempt from assessment under the Act:

(a) Machinery and equipment which are portable in use and are not restricted in their places of work to fixed sites or parcels of land. . .;

(b) Furniture

(c) Motor vehicles, . . .;

(d) Rolling-stock, . . .;

(e) Automatic music-boxes;

(f) Stored or spare equipment which is not installed;

(g) First-aid equipment;

(h) Medical, optical and dental equipment used in the related practice

(i) Show-cases, display racks and display-cabinets, . . .

(j) Research equipment, ...

In support of his submission, counsel for appellants points out that the board, in connection with another issue, concluded that the units should be classified as "residential" as opposed to "business and other" property as those terms are employed in a 1981 regulation made under the Act: B.C. Reg. 438/81. Then, with reference to s-s. 3-2 of the above quoted regulation, he argues that the units are "residential improvements". Since s-s. 3-2 exempts only such residential improvements as are defined in s-s. 3-1, namely, "fixtures, machinery and similar things", and these units are neither fixtures nor machinery, are they "similar things"?

Counsel for the respondent submits that the regulation under consideration supplies its own dictionary and that the units are not things similar to fixtures and machinery. Section 3 of the regulation, he argues, is concerned with a class of fixtures, machinery and similar things, some of which could be located in buildings and structures but none of which embrace buildings and structures which are not themselves fixtures. The ambit of s. 3 of the regulation may be contrasted with that of the definitions of "improvements" in s. 1 of the Act: "all buildings, fixtures, machinery, structures and similar things. . . ." It may be noted, too, that nothing in s-s. 3-3 of the regulation supports the suggestion that the class of things similar to fixtures and machinery embraces buildings or structures.

I agree with the submission of counsel for the respondent that the units are not "residential improvements" as defined in s-s. 3-1 of the regulation. Accordingly, I find it unnecessary to consider whether, if they were residential improvements, they would nonetheless be assessable by reason of the s-s. 3-2 exclusion from the exemption of such residential improvements as are "used for industrial or commercial purposes".

It follows that I would answer the question required to be submitted by the appellants: No.

5. *Assessment for general municipal and Provincial taxation purposes*.

The material portion of the definition of "improvements" for these purposes reads as follows:

> "improvements" for general municipal and Provincial taxation purposes under the *Municipal Act*, *Vancouver Charter* and *Taxation (Rural Area) Act* includes

> (a) all buildings, fixtures, machinery, structures and similar things erected in, on, under or affixed to land or to a building, fixture, or structure in, on, under or affixed to land and, without limiting the generality of the foregoing, includes . . . storage tanks. . . but does not include those fixtures, machinery and similar things, other than buildings and storage tanks as, if erected or affixed by a tenant, would, as between landlord and tenant, be removable by the tenant as personal property; . . . .

Again, I have underlined the portions of the definition which, in my view, are determinative of the result. In contrast with the definition relating to assessment for school purposes, it may be noted at once that the definition of "improvements" now under consideration does not embrace things "placed" on the land.

It will be convenient to commence with the last of the five questions required by the respondent to be submitted for the opinion of this Court. It is common ground that unless the units were either affixed to the land or erected on the land, they are not drawn within the purview of the definition of "improvements" relating to assessment for general municipal and Provincial taxation purposes. The board concluded that the units were neither "affixed to land" nor "erected on land". It did not err in this finding the first two questions, as well as the fifth, require a negative answer. Questions 2 and 3 become academic and need not be answered.

Are the units here in question "affixed to land"? In support of his submission that this question ought to be answered in the negative, counsel for the appellants relies in particular on another recent decision of Mr. Justice Taylor, namely, *Britco Structures Ltd.* v. *Minister of Finance for British Columbia* (May 25, 1984), Vancouver Registry No. A833627, unreported. In issue there was the status of portable buildings, resting on their own weight on blocks, for purposes of determining liability to assessment for sales tax under the *Social Service Tax Act*, R.S.B.C. 1979, c. 388. Following a review of decisions respecting mobile homes and buildings, Taylor J. concluded (at p. 6):

> The authorities cited seem now to have established that a portable building which rests on land by its own weight only, and which has no permanent foundation beneath it, will remain a chattel even though it may have utility connections.

While Taylor J. was concerned with the status of such units for the purposes of a different enactment his analysis, in my opinion, is applicable to the issue before me.

I conclude that the units here in question remain chattels and that they are not "affixed to land" in the relevant sense.

Are they "erected on land"? In its primary sense, "erected" is employed to refer to that which is built or constructed, or at least set up in the sense of assembled. According to paragraphs 2 and 3 of the board's statement of material facts, these units were wheeled or trucked to the site and connected to utilities. They were placed on the site. They were not "erected" there within the ordinary dictionary meaning of the word. Nor do the authorities to which I was referred command the extended interpretation of "erected" for which the respondent contends.

Accordingly, I would answer Question 5: No.

As pointed out earlier in these reasons, a negative answer to Question 5 requires negative answers as well to Questions 1 and 2 and renders unnecessary answers to the third and fourth questions required to be submitted by the assessor.

6. *Conclusions*.

1. The answer to the question required by the appellants to be submitted for an opinion is: No.

2. With respect to the questions required by the respondent to be submitted for an opinion, the answer to each of Questions 1,2 and 5 is: No. In view of these answers, Questions 3 and 4 need not be addressed.