G.P.-S.59968—1970-71—2 500

J 219

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(APPELLATE Provincial Division)
(Provinsiale Afdeling)

Appeal in Civil Case
Appèl in Siviele Saak

THE SECRETARY OF INLAND REVENUE *Appellant,*

versus

SMALLEY PROPERTIES (PROPRIETARY) LIMITED *Respondent*

Appellant's Attorney Dept. of Inland Revenue (Pretoria) *Respondent's Attorney* Hill McIntosh
Prokureur vir Appellant *Prokureur vir Respondent*

Appellant's Advocate B. de Villiers S.C. *Respondent's Advocate* A. J. Swanepoel SC
Advokaat vir Appellant J. H. Conradie *Advokaat vir Respondent* H. Z. Steyn

Set down for hearing on 9
Op die rol geplaas vir verhoor op 1

Corum: Holmes, Trollip, Rabie JJA et Miller AJA

(I.C.J.O.) 9 4.30 pm ——— 11.00 am
11.10 am ——— 1.0 4.30 pm
2 12 pm ——— 4.45 pm

C. A. V.

The Court dismissed the said appeal with costs, including those appertaining to the employment of two Counsel

Judgment per Trollip JA

Bills taxed—Kosterekenings getaksseer Registrar

Writ issued Lasbrief uitgereik	Date Datum	Amount Bedrag	Initials Paraaf
24/9			

Date and initials
Datum en paraaf

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

SECRETARY FOR INLAND REVENUE ..... APPELLANT

AND

CHARKAY PROPERTIES (PROPRIETARY) LIMITED ..... RESPONDENT

Coram: Holmes, Trollip, Rabie, Kotzé, and Miller, JJ.A.

Heard: 9 September 1976 Delivered: 24 September 1976

J U D G M E N T

TROLLIP, J.A. :

This appeal concerns the question whether or not the taxpayer (respondent) was entitled to deduct depreciation allowances under section 11(e) of the Income Tax

Act .... /2

Act, No. 58 of 1962, as amended, for the years of assessment ended 30 June 1970 and 1971, for demountable partitions used as the inner walls of a building owned by respondent and let as offices. The Transvaal Income Tax Special Court held that the allowances were deductible. The Secretary for Inland Revenue has appealed direct to this Court, with the necessary consent, against that decision.

Respondent, a property owning company, derives its income from letting business premises and offices in a building, Citibank Centre, in Johannesburg. The business premises are on the ground floor. The 14 upper floors contain the offices. These upper floors have no permanent internal brick walls. In their stead demountable partitions are used. For the purposes of this appeal it

is .... /3

is necessary to describe the object and nature of these partitions and the manner of positioning them in some detail.

They were positioned only after the building had been erected. Their purpose is to avoid the usual permanent and rigid divisions of the floor space into offices by conventional built-in brick or concrete walls and to substitute flexible divisions to suit the particular space requirements of individual tenants both at the commencement and during the course of their tenancies. Hence they are so designed that they can be mounted, demounted, and remounted to suit such requirements. Although they cost more than brick inner walls, they are nowadays often preferred in the design and construction of modern buildings for the flexibility in space that they can provide.

The .... /4

The partitions used by respondent are light in weight. Each consists of an aluminium framework with infil panels made of gypsum and covered with wood veneer or vinyl surface material. For a normal office of about 15 feet in length the aluminium framework includes 3 uprights. To each end of them a light metal bracket is attached by screws. Once the position of an inner wall has been decided on, the framework is attached to the floor and ceiling (but not the walls) of the buildings in this way: the bottom bracket of the upright is fastened to the concrete floor (a permanent part of the building) by driving a steel masonry nail through a hole in the bracket into the concrete with an ordinary hammer; thus three such nails are usually used to secure the framework to the floor; the top bracket is

fastened .... /5

fastened to the concrete ceiling by means of a screw which fits through it into specially designed ceiling panels and fittings attached to the ceiling and forming part of the building; the gypsum panels are then fitted into the aluminium framework and are held in position by means of cover plates which are screwed to the aluminium sections. When the partitions are in position they look like inner, dividing walls, and they perform the same function.

To remove a mounted partition the above fitting procedure is reversed: the cover plates are unscrewed thereby releasing the gypsum panels; the aluminium framework is then detached from the floor by levering the angle brackets from the concrete floor, the nails coming out cleanly and leaving holes that are hardly

perceptible .... /6

perceptible; but they may be filled with some filler, if so desired; otherwise they soon become filled with dust; the framework is simply detached from the ceiling and its fittings by unscrewing the screws through the top brackets. These partitions can therefore be easily and inexpensively moved to other positions or removed altogether without the use of highly skilled labour.

Indeed, the admitted facts show that, during the first five years (1969 - 1973) for which the offices were leased, some of the partitions were moved in order to suit tenants, and that, when the leases expired in 1973 and a number of new tenants took occupation of offices on several floors of the building, a "fairly extensive movement of partitions" occurred, in which they were removed

or .... /7

or repositioned to suit the requirements of the new lessees. Hence the stated case says "it is normal use for these partitions to be shifted around, and it is not the normal use for them to stand unmoved".

A partition can survive no more than 3 to 6 removals, the number depending upon the skill (and presumably the care) exercised by those doing the moving. The life of a partition left in position is shorter than that of an inner brick wall or of the building itself. It is subject to wear and tear when in position through being bleached by the sun, bumped by chairs and other objects, damaged by water spilt on it, and by being moved or removed.

Section 11(e) of the Act (as substituted by

section .... /8

section 11(1)(a) of Act No. 88 of 1965) allows a deduction to be made for depreciation from the income of a taxpayer derived from carrying on a trade. The relevant part reads that there may be so deducted -

> "such sum as the Secretary may think just and reasonable as representing the amount by which the value of any machinery, implements, utensils and articles used by the taxpayer for the purpose of his trade has been diminished by reason of wear and tear during the year of assessment:
>
> Provided that -
>
> (i) .....
>
> (ii) in no case shall any allowance be made for the depreciation of buildings or other structures or works of a permanent nature."

The respondent claimed depreciation allowances of R23 542 and R14 125 for the demountable partitions for the years of assessment ended 30 June 1970 and 1971

respectively .... /9

respectively. The Secretary disallowed them, presumably on the ground that proviso (ii) applied, and he assessed respondent for tax on that basis. Respondent appealed to the Special Income Tax Court. That Court accepted, because it was not disputed by the Secretary's representative appearing at the hearing, that the partitions were "articles used by the taxpayer for the purpose of his trade". But on the applicability of the proviso the Court was divided. The majority (the President, COLMAN, J., and the commercial member) held that the partitions were not an integral part of respondent's building or "works", and that, although they were "structures", they were not of a permanent nature, while the accountant member's view was that they were a part of respondent's building, or at any rate, structures of a permanent nature. As the majority view .....

had .... /10

had to prevail, the respondent's appeal succeeded, the assessments in question were set aside, and the matter was referred back to the Secretary for reassessment on the footing that a deduction for wear and tear of the partitions is allowable in each year of assessment in such sum as the Secretary may think just and reasonable.

The contentions advanced by counsel before us on behalf of the Secretary can be summarized thus: the demountable partitions must be considered, not in the abstract, but relatively, that is, as they were positioned in the building and used by respondent during the years of assessment in question; as such, they were identical with ordinary built-in inner walls in rigidity, in appearance, and especially in use and function or purpose; consequently

they .... /11

they were neither "articles" nor were they "used by the taxpayer for the purpose of his trade"; in truth, they were an integral part of the building in which they were positioned. Counsel eschewed contending that they were either "structures" or "works"; hence it is unnecessary for us to express any view on that aspect of proviso (ii).

First, as to the meaning of "articles" in the phrase "machinery, implements, utensils and articles used by the taxpayer for the purpose of his trade". The word "article" is of a wide and somewhat vague or indefinite connotation. Its ordinary meaning, relevant here, is a material thing forming part of, or coming under the head of, any class (Oxford English Dictionary, meanings IV, 13 and 14; and Webster's Third New International Dictionary, meanings 5a and 6a). The phrase quoted above itself identifies the particular class of things in question. "Articles" there thus means the class of all those material things that are

used ..../12

used by the taxpayer for the purpose of his "trade". "Things" means, of course, material entities or objects of any kind. "Trade" is also comprehensively defined in section 1 of the Act as including "every profession, trade, business, employment, calling, occupation or venture, including the letting of any property". Hence the class of things involved is of considerable amplitude. Apart from machinery, implements, and utensils, the material things that are capable of being used in those multifarious activities, and which are subject to wear and tear through being so used, are infinite. Yet the Legislature must have intended (subject, of course, to the provisos to section 11(e)) that all those material things so used should qualify for the depreciation allowance - no reason emerges from

the .... /13

the Act why some and not others should qualify; and, because of the difficulty or impracticability of denominating all those things precisely, the Legislature probably used the compendious, albeit somewhat vague, designation of "articles" as a convenient and practical way of covering them all. Moreover, the preceding words, "machinery, implements, utensils", do not sufficiently clearly point to any genus of material things that might otherwise, through the ejusdem generis rule, serve to confine "articles" to some species of that genus; so no reason exists for not giving that word the ordinary, wide connotation canvassed above (see Steyn, Die Uitleg van Wette, 3rd ed. pp. 31, 37-38, for the general principles applicable, and the Australian case Quarries Limited v. Federal Commissioner of Taxation 8 A.I.T.R. 383 at pp. 384,

386/7 for a similar application of them to the expression "plant or articles" relating to depreciation in their statute). Moreover, the fact that the Act elsewhere specifically excludes certain things from the application of "machinery, implements, utensils and articles", which would otherwise fall under "articles", tends to confirm that conclusion. Thus, ships and aircraft are excluded by proviso (iii), as amended; and vehicles and equipment for managers' and servants' rooms and offices are excluded for the purpose of the hotelkeepers' allowance provided in section 12(3), as amended.

I have dealt with the meaning of "articles" at some length inter alia because of certain dicta in Rhodesia Railways and Others v. Commissioner of Taxes 1925 A.D. 438. The last of many issues decided in that case was

whether .... /15

whether or not the taxpayer was entitled to a wear and tear allowance for the rails and sleepers of its positioned railway lines in terms of the provisions in a statute substantially the same as section 11(e) and proviso (ii) of our present Act. In the Court a quo, RUSSELL, J., said (p. 451) -

> "The rails and sleepers are hardly to be regarded as utensils, implements or articles of a like nature." (My italics.)

He then found that they were also not "machinery" and were structures or works of a permanent nature in terms of the proviso. Hence the allowance was refused. It seems that the learned Judge applied the ejusdem generis rule and regarded "articles" as being "of a like nature" to that of "utensils, implements". This Court dismissed the appeal on this issue through STRATFORD, A.J.A. He said at p. 470:

"It .... /16

"It thus clearly follows that they are works of a permanent nature within the meaning of the proviso .... which excludes any deduction for their diminished value. This disposes of this claim. I would merely add, however, that I share the learned judge's opinion that rails and sleepers cannot be classified as 'machinery', nor, indeed, with 'implements, utensils or articles'."

The dicta in both Courts relating to "articles" were clearly obiter; they were, moreover, not supported by any reasoning. For reasons already given I do not think that any limitation to the meaning of "articles" by the ejusdem generis rule is justified. Furthermore, the true explanation for the view of STRATFORD, A.J.A., is possibly that, once he had found that the rails and sleepers were immovable property through being permanently annexed to the soil, he considered that they could not be

classified .... /17

classified as "machinery, implements, utensils, or articles". (This approach will be adverted to again later.) The above *dicta* do not, therefore, detract from the conclusion I reached above about the meaning of "articles".

It follows that, considered in the abstract, the demountable partitions do undoubtedly constitute "articles". As RAMSBOTTOM, J.A. said in C.I.R. v. Le Sueur 1960 (2) S.A. 708 (A.D.) - to be referred to more fully later - at p. 713 H:

> "Everything which goes into the erection of a building is originally simply an article."

He then mentioned, by way of illustration, manufactured articles such as window-frames and windows, door frames and doors, strong rooms, and built-in cupboards.

I turn now to consider proviso (ii). It excludes the depreciation allowance if the "articles" are "buildings or other structures or works of a permanent nature". As a building can sometimes be a movable or temporary structure (Pettersen v. Sorvaag 1955 (3) S.A. 624 (A.D.); Le Sueur's case, supra, at p. 717 B-D), I think that "buildings" in the proviso, like "structures or works", is also confined to buildings of a permanent nature (9 S.A.T.C. 313). It was rightly common cause that the word includes an integral part of such a building. Hence, if an article is so integrated into a building as to become part of it in the way about to be canvassed, no allowance is claimable for its depreciation. The reason is, not only because of the applicability of proviso (ii), but also because it loses its

own .... /19

own identity and character and ordinarily ceases to be an "article" under section 11(e). Nice questions sometimes arise about whether an article and building or structure are physically integrated in such a way that the latter accedes to and assumes the identity or character of the article, or conversely - see 22 S.A.T.C. 397 at p. 399, quoting from an unreported tax case; and cf. proviso (ii A) as inserted by Act 85 of 1974. But that difficulty does not arise here for the issue is simply whether the demountable partitions, when positioned, became so integrated with respondent's building as to form part of it.

Le Sueur's case, supra, 1960 (2) S.A. 708 (A.D.), dealt with a similar problem. Under paragraph 17(1) (f) of the 3rd Schedule of the 1941 Income Tax Act (now paragraph 12(1)(f) of the 1st Schedule of the present Act) the

expenditure ..... /20

expenditure incurred by a farmer erecting buildings used in connection with farming operations was deductible from his income. There the taxpayer, a farmer, erected such buildings; inside them he also erected metal and wire cages, i.e. batteries, to house poultry for the mass production of eggs; these batteries were fixed in the concrete floors of the buildings to give them the required rigidity; but they could be dismantled and removed without causing undue damage to themselves or the buildings. The issue was whether or not the batteries formed part of the buildings so that the cost of erecting them could also be deducted together with the cost of the buildings. The lower Court held that because of the taxpayer's intention in attaching the batteries, but not because of the manner of attaching them <u>per se</u>, they became

immovable .... /21

immovable property and thus formed part of the buildings. This Court overruled that decision, holding that the inquiry under paragraph 17(1)(f) was, not whether the batteries had become immovable property, but whether they had become part of the buildings, and it found on the facts that they had not. RAMSBOTTOM, J.A. and BOTHA, A.J.A., gave separate concurring judgments in each of which the other members of the Court concurred.

The parts of and dicta in the judgments relating to the present problems are the following:-

1. Per RAMSBOTTOM, J.A., at pp. 713 G - 714 D:

> "I think that one test - there may be others - of whether a thing is part of a building for the purpose of para. 17(1)(f) of Schedule 3 is whether it has become part of the fabric of the building ..... Things which are brought into a building and which form no

part .... /22

part of the fabric thereof, even though they may be fastened to the floor or the walls do not, in my opinion, form part of the building for the purpose of para. 17(1)(f) of Schedule 3 .... Apart from the fact that the racks are fastened to the floor, the batteries are not attached to the building - clearly they do not form part of its fabric .... If he had built in his cages in the way in which a built-in-cupboard or a built-in-bookcase is built into the fabric of a building, they would have formed part of the building. But that is not what he has done. He has placed what is essentially equipment in a shed in such a way that it has not become part of the building but has retained its character as equipment."

2. BOTHA, A.J.A., also emphasized that, for the article to become part of the building, it is not sufficient that it is merely attached thereto; it has to be so structurally integrated or otherwise physically incorporated into the building that it loses its own separate identity and can no longer be detached from the building without doing

substantial .... /23

substantial injury to the article or the building (pp. 718 C - 719 F).

3. As to the relevance of the permanency of otherwise of the attachment of the article to the building, RAMSBOTTOM, J.A., said at p. 712 C:

> "No doubt the fact that something has been permanently affixed to the building is relevant to the question of whether or not it is part of the building, but it is by no means conclusive."

BOTHA, A.J.A., indicated (p. 718 G) that, even if it is attached "in some permanent fashion to the building", if it is nevertheless capable of being separated from it, it would not necessarily become part of the building.

4. As to the intention with which the article is attached, RAMSBOTTOM, J.A., said (p. 713 B) that it was "of much less

importance .... /24

importance" than the nature of the article and the manner of its attachment. On the other hand BOTHA, A.J.A., said it was irrelevant, the question having to be determined objectively (pp. 717 G-H; 718 H - 719 A; 720 B).

5. Per BOTHA, A.J.A., at p. 718:

> "The word 'building' in para. 17(1)(f) of the Third Schedule to the Act is not used in any technical sense, and the question what appurtenances form part of a building for the purposes of that paragraph, is a question of fact."

In regard to the dicta referred to in pars. 3 and 4 above, I think that it should be borne in mind that Le Sueur's case dealt with provisions somewhat different in form, substance, and purpose from those in section 11(e) and proviso (ii). The requirement of permanency of the buildings, structures, and works underlies the whole of

proviso .... /25

proviso (ii), probably because buildings, etc., of that nature do not ordinarily suffer wear and tear through use or not to such an extent that a depreciation allowance for them is warranted. Hence, for an article to form part of such a building for the purpose of proviso (ii), I think that it must have been permanently incorporated or integrated into it. (I use "permanently" there in its comparative or practical sense as meaning indefinitely or not temporarily.) The issue of its permanency or otherwise, will often also be objectively determined by applying the factors mentioned in pars. 1 and 2 above - or other factors, for those were not intended to be exhaustive - but if there is any uncertainty about whether the attachment is part of the building, I see no reason why the subjective factor, the

owner's .... /26

owner's intention in attaching the article to the building, should not also be taken into account.

To sum up: before an article attached to a building of a permanent nature can be said to form part of it for the purposes of proviso (ii) to section 11(e) of the Act, it must have been structurally integrated or otherwise physically incorporated into the building permanently in such a way that it has lost its own, separate identity and character; the question whether or not that has occurred is one of fact.

The nature of respondent's demountable partitions and the way in which they were mounted and used in respondent's building during the relevant years of assessment have been fully described above. According to that

description .... /27

description they were only lightly, albeit rigidly, attached to the floors and ceilings; they could easily and inexpensively be detached and removed without causing any injury to themselves or the floors or ceilings; they could then be either stored or similarly mounted and attached in some other position to suit the tenants; indeed, their normal use and function was not for them to remain unmoved but to be shifted around; hence their mounting and attachment in a particular position could not be regarded, and indeed was not regarded by the majority in the Court a quo, as being permanent; moreover, for the same reasons, it can be said that, while in position, they did not lose their identity or character as movable inner walls. Consequently, I do not think that they were structurally integrated or otherwise physically incorporated into the building permanently in such a way that they lost their own,

separate .... /28

separate identity and character, or, in the words used by RAMSBOTTOM, J.A., that they were built into the fabric of respondent's building.

That, when in position, they were identical with ordinary built-in inner walls in rigidity, appearance, use, and function or purpose, although perhaps relevant, is of little consequence, for that is not the ultimate criterion. There are many articles of furniture or equipment which are identical in those respects with their built-in counterparts, such as curtaining, blinds, desks, counters, safes, refrigerators, bookcases, cupboards, etc., but which, according to the above test, are not parts of the building in which they are positioned. It was also contended that, as the inner walls of the building, the demountable

partitions .... /29

partitions were indispensable to the fulfilment of its function, and that, despite the insubstantial degree of their physical attachment to the building, they were as much part of the building and as indispensable as, for example, the doors, roof, or ceilings thereof. But again that is not the correct test. True, the ordinary doors of a building or roof tiles are a part of it, although the doors are only attached by their hinges and the roof tiles by their own weight and both can easily be removed. None the less they are regarded as part of the building because they are structurally integrated or physically incorporated into it permanently; for although they are easily removable, the purpose and intention with which they are built into the building's fabric (and intention here is of importance) is that they should remain

in .... /30

in those positions permanently. On the other hand, the demountable partitions are not only easily removable, but, according to their normal use, they are meant to be and are in fact moved about or removed from time to time.

Counsel for the Secretary also referred to certain Australian decisions, mostly of the Commonwealth Taxation Board of Review, relating to the deductibility under their statute of depreciation of "plant or articles owned by a taxpayer and used by him during that year for the purpose of producing assessable income". There is no exclusion like our proviso (ii), but, according to judicial interpretation, "plant or articles" does not mean the building itself in which the taxpayer's operations are carried on (see, for example, 10 C.T.B.R. (New Series) 151 at p. 152, pars. 6 and 7).

But .... /31

But, even if those decisions can therefore be regarded as being of persuasive guidance under our section 11(e) and proviso (ii), it is clear that each turned on its own particular facts. They can therefore be distinguished on that ground from the case at present before us. The decision most heavily relied on by counsel was 10 C.T.B.R. (N.S.) 151. There the taxpayer company was the owner of a building let to a retail merchant. It claimed depreciation in respect of the cost of a "shop front" attached to the building. This shop front was 65 feet long, was constructed of plate glass and to the tenant's requirements, and it was held in position by a steel frame screwed to the masonry of the building. At the end of the frame were large sliding doors giving access to and egress from the shop. There was evidence that the shop front might

readily .... /32

readily be removed and new ones fitted when a change was made in the type of business conducted on the premises. Consequently counsel for the taxpayer contended that the shop front had not lost its identity as "an article" so as to become part of the building. The Board, however, said (p. 152, par. 8):

> "But a similar argument might quite easily be advanced in relation to a door of the building or a window or perhaps even a prefabricated wall. The answer, we think, is that for the taxpayer company they have no independent significance, no separate existence as articles: all that they represent to it are parts of a building and nothing more."

The argument in respect of doors, etc., has already been dealt with. From the facts of that case, too, it would appear that the shop front, despite its removability, was

structurally .... /33

structurally integrated into the building, not only to display merchandise, but to serve the purpose of the shop's outer front wall. It must therefore have been affixed with some degree of permanence. Indeed, the Board said (p. 153, par. 10) that, if the shop front was used at all by the taxpayer, it was only used "as an integral part of the demised building". It therefore differs on the facts from the present case.

The other cases quoted were 10 C.T.B.R. (N.S.) 594 - stoves, sinks, baths etc., affixed in flats let by the taxpayer to tenants, although readily removable, were held to be fixtures forming part of the building and not "plant or articles", because of the manner and the purpose of their installation in the flats; 13 C.T.B.R. (N.S.) 396 -

hot .... /34

hot water heater merely affixed by brackets to a wall to supply hot water in a flat let by the taxpayer, was held to be, not "plant or (an) article", but part of the building, since it was affixed with the intention and for the purpose of remaining in that position permanently; Imperial Chemical Industries of Australia and New Zealand Ltd. v. Federal Commissioner of Taxation, 1 A.T.R. 450 - special sound-absorbing ceilings, attached by metal rods to the concrete floor above them, and which could readily be removed, for example, for gaining access to service pipes, were held not to be "plant or articles, but to be part of the building, like its walls, floors, windows and doors, not to mention the roof", that is, because of the purpose, method, and intention of their installation. Those cases are therefore

distinguishable .... /35

distinguishable on the facts.

They should be contrasted with the English case of Jarrold (Inspector of Taxes) v. John Good & Sons, Ltd. (1963) 1 All E.R. 141 (C.A.). It dealt with movable office partitions very similar in design, purpose, and method of attachment to the building to the demountable partitions in question here. The taxpayer there conducted the trade of shipping agents in a building it owned and occupied. The volume of its work and size of its staff fluctuated from time to time. In order to accommodate such fluctuations it used the movable partitions to increase or decrease the sizes of its offices accordingly from time to time. The sole issue was whether or not they were "plant" used for the taxpayer's trade. The Income Tax Commissioners

decided .... /36

applied Le Sueur's case, supra, it became a question of fact whether or not the demountable partitions were part of the respondent's building. The members of the Court were divided on that question. For reasons already given I think that the majority rightly decided that they were not part of the building. However, it is not an easy problem to resolve, as is evidenced by the division of views in the Special Court. Hence, even if the majority erred, their conclusion was one of fact, with which, in the absence of any of the recognized vitiating factors, we cannot interfere on appeal.

It follows that, even when the demountable partitions were positioned and used, they remained "articles" within the meaning of section 11(e). The remaining question is, were they then "used by the taxpayer for the purpose of

his .... /38

his trade" during the relevant years of assessment? As previously stated the Court a quo accepted or assumed, without deciding, that they did. Respondent's trade is the letting of the building in question; no information is disclosed in the stated case whether or not higher rentals were charged for the added, modern facility afforded by the demountable partitions; but it is clear that they were kept available and used when required in order to attract and retain tenants for the purpose of facilitating or ensuring that respondent received income. Hence, I think that when the partitions were mounted and in use in respondent's building they were being used for the purpose of its trade (cf. Heron Investments Ltd. v. S.I.R. 1971 (4) S.A. 201 (A.D.) at p. 203 F). It is unnecessary to decide whether they are also so used when

they .... /39

they are merely being kept in store available for use when required.

In the result the appeal is dismissed with costs, including those appertaining to the employment of two counsel.

W.G. TROLLIP, J.A.

Kotzé, J.A.)
Miller, J.A.) concur

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between :

SECRETARY FOR INLAND REVENUE — Appellant

and

CHARKAY PROPERTIES
(PROPRIETARY) LIMITED — Respondent

Coram: HOLMES, TROLLIP, RABIE, KOTZé,
et MILLER, JJ.A.

Heard: 9 September 1976

Delivered: 24 September 1976

J U D G M E N T

HOLMES, J.A. :-

I agree, with respect, that the appeal fails.

/This .....

This novel and border-line case has caused me no little difficulty. Had I been a member of the Court a quo I might perhaps have shared the conclusion of the accountant member who dissented. The paramount fact is that one is here dealing with a new form of architecture and building construction. First, a shell is erected - outer walls, roof, floors, windows, stairs, probably lifts and, doubtless, toilets. The owner's business is to let offices. At that stage the building is incomplete, considered as an office block. To complete it, internal walls are put up, albeit of light construction and capable of being unfixed and moved. These walls are a sine qua non of the very existence of the office block. Are they part of the building? This is a question of fact and degree. In deciding this, it is first necessary to think one's way through the particular facts of the case, before turning to

/"tests" .....

"tests". The so-called integration test, appropriately applied to the particular facts in C.I.R. v. Le Sueur, 1960 (2) S.A. 708 (A.D.), has not been held to be the exclusive test: it is best applicable where you have a complete building and you introduce something into it and the question is whether that thing is equipment or part of the building. That was the situation in Le Sueur's case, supra, where it was appropriate to apply the integration test. There a farmer had three existing outbuildings, formerly used as a chicken brooder and chicken rearing houses. In addition, he erected two new buildings in the nature of sheds. In all of these he installed, and fastened with some rigidity, rows and tiers of ready-made egg-laying batteries or cages. Ramsbottom, J.A., held that these were essentially equipment and not part of the building.

/In the .....

In the present case, however, when putting up the inner walls you do not start with an already complete building: it is a shell and obviously incomplete. The subject-matter of the enquiry is not something introduced into a completed building: it is a structural arrangement for the very completion of the building. The Le Sueur test is not per se necessarily decisive in all cases.

As to the permanency of the installed inner walls, so long as the shell exists, you must have these inner walls (even if not always in precisely the same position) otherwise you do not have a com= pleted office block. In that sense they might be said to be part of the building.

However, having said all that, I remind myself that this is an appeal concerning facts; and that on that footing I cannot interfere with the

/finding .....

finding of the majority of the Court a quo unless I am persuaded that their decision is one which could not reasonably have been reached. On all the facts, I cannot conscientiously go that length in this borderline case.

G.N. HOLMES
JUDGE OF APPEAL

RABIE, J.A. - concurs