

Michigan Law Review

Volume 37 | Issue 3

1939

FIXTURES - UNIFORM CONDITIONAL SALES ACT - INTERPRETATION OF THE WORD "FREEHOLD"

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Recommended Citation

Robert E. Sipes, *FIXTURES - UNIFORM CONDITIONAL SALES ACT - INTERPRETATION OF THE WORD "FREEHOLD"*, 37 MICH. L. REV. (1939).

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FIXTURES — UNIFORM CONDITIONAL SALES ACT — INTERPRETATION OF THE WORD "FREEHOLD" — Plaintiff installed elevators in an apartment house under construction. The elevators were covered by a conditional sale contract with the general contractor. Prior to the sale of the elevators the apartment house had been mortgaged. Upon the contractor's default in payment for the elevators, plaintiff asserted his right to remove the elevators as against the owner of the apartment and the mortgagee. *Held*, the elevators could be removed. *Otis Elevator Co. v. Arey-Hauser Co.*, (D. C. Pa. 1938) 22 F. Supp. 4.

The word "freehold"¹ used in section 7 of the Uniform Conditional Sales Act has been differently defined by the various courts. The interpretation intended by the author of the act² and followed by a number of courts is that of the common law, meaning "structure," or physical condition of the land at the time of the annexation of the chattel.³ Under this interpretation, it easily can be ascertained whether the removal of the article will materially injure the realty or structure thereon. This interpretation does not unduly harm the claimant of the realty, for the land remains as it was when he accepted it for security. Other courts have interpreted "freehold" in the sense of "plant" or present going concern at the time of removal.⁴ In such case, the removal of almost any article used in the purpose of the building might be considered a material injury to the freehold.⁵ While this does not totally deprive the chattel-seller of protection, as he may attempt to get the realty claimant's consent to the installation of the articles with the right reserved to remove in case of default, it does put a burden upon him and a corresponding benefit upon the realty claimant which their respective equities perhaps do not justify.⁶ This interpretation has been criticized by commentators.⁷ The question has had an interesting history in Pennsylvania.

¹ It is used there in laying down rules governing the claims of different parties to the same article attached to the freehold. The disposition of the claim depends upon whether or not the article in question can be removed "without material injury to the freehold."

² 2A UNIFORM LAWS ANNOTATED 99 (1924).

³ *People's Savings & Trust Co. v. Munsert*, 212 Wis. 449, 249 N. W. 527, 250 N. W. 385 (1933); *Harvard Financial Corp. v. Greenblatt Construction Co.*, 261 N. Y. 169, 184 N. E. 748 (1933); *Bank of America Nat. Assn. v. La Reine Hotel Corp.*, 108 N. J. Eq. 561, 156 A. 28 (1931).

⁴ *Future Bldg. & Loan Assn. v. Mazzocchi*, 107 N. J. Eq. 422, 152 A. 776 (1931); *Domestic Electric Co. v. Mezzaluna*, 109 N. J. L. 574, 162 A. 722 (1932); *Central Lithograph Co. v. Eatmor Chocolate Co.*, 316 Pa. 300, 175 A. 697 (1934).

⁵ The courts may vary as to the degree of usefulness the article must be to the "plant" before it is considered a part of it. In *Independent Aetna Sprinkler Corp. v. Morris*, 114 N. J. L. 23, 175 A. 102 (1934), a sprinkling system required by law for a building of the size of the one it was installed in was not considered so essential as to become a part of the realty. But in *Domestic Electric Co. v. Mezzaluna*, 109 N. J. L. 574, 162 A. 722 (1932), electric refrigerators installed in an apartment house were considered necessary to the building as an apartment house.

⁶ *Holt v. Henley*, 232 U. S. 637, 34 S. Ct. 459 (1913).

⁷ 30 MICH. L. REV. 469 (1932); 32 MICH. L. REV. 555 (1934); 20 CAL. L. REV. 567 (1932). But see 83 PA. L. REV. 916 (1935).

Before the Sales Act of 1915, in determining whether an article was so attached to the freehold as to become a fixture, the Pennsylvania court used "freehold" in the sense of "plant."⁸ But that act made possible retention of the chattel character of the article attached to the realty or structure, regardless of injury to the freehold.⁹ In 1925 passage of a conditional sales act¹⁰ made the interpretation of "freehold" once again important. The first case involving this point was a federal district court case.¹¹ The court apparently assumed that "freehold" meant the physical structure as of the time of annexation of the chattels and allowed the removal of the mill machinery therein involved. However, the first state decision, *Central Lithograph Co. v. Eatmor Chocolate Co.*,¹² announced its preference for the "plant" interpretation of "freehold" and cited the early Pennsylvania cases as correctly interpreting the word, having regard for the state's manufacturing prominence. While it is possible that this was mere dictum, there being evidence in the case that the conditional vendor had not complied with the provisions of the conditional sales act, it did indicate that the Pennsylvania court was about to join New Jersey in adherence to the minority view. However, the amendment of 1935 to the conditional sales act gave the conditional vendor rights even greater than he would have under the "structure" definition of "freehold."¹³ Under this amendment any article may be removed, regardless of the injury to the freehold, as long as the injuries can be repaired and a bond is posted to insure the repairs being made. The instant case, which was decided under the law before the amendment of 1935, rejects the "plant" definition despite the language in the *Eatmor* case. Such an interpretation seems justified, however, both by the language of the Pennsylvania statute of 1925, which contains a provision for the repair of the freehold injured by the removal of the article annexed thereto, and by the desirability of having an interpretation of the "uniform" laws that is approved by the commissioners and adopted by the greater number of states having such laws.

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⁸ *Voorhis v. Freeman*, 2 Watts & S. (Pa.) 116 (1841); *Titus v. Poland Coal Co.*, 275 Pa. 431, 119 A. 540 (1923).

⁹ *Ridgway Dynamo & Engine Co. v. Werder*, 287 Pa. 358, 135 A. 216 (1926).

¹⁰ "As against an owner, a prior mortgagee or other prior encumbrancer of the realty . . . if any of the goods are so attached to the realty as not to be severable without material injury to the freehold, the reservation of property in the goods so attached shall be void. . . ." 69 Pa. Stat. (Purdon, 1931), § 404.

¹¹ *Buss Machinery Works v. Watson-Town Door & Sash Co.*, (D. C. Pa. 1933) 2 F. Supp. 758.

¹² *Central Lithograph Co. v. Eatmor Chocolate Co.*, 316 Pa. 300, 175 A. 697 (1934).

¹³ Pa. Laws (1935), p. 658, § 1, Stat. (Purdon, Supp. 1937), § 404; *In re Smith*, (D. C. Pa. 1937) 19 F. Supp. 595.