Michigan Law Review

Volume 35 | Issue 7

1937

FIXTURES - GASOLINE STATION - RIGHTS OF TENANT TO REMOVE

Michigan Law Review

FIXTURES — GASOLINE STATION — RIGHTS OF TENANT TO REMOVE — Defendant leased a vacant lot from the plaintiff for a three-year period, to use as a gasoline station site. The lease, a filled-in printed form, supplied and

drawn up by the defendant was silent as to which of the parties would erect the building, but stipulated that the lessee agreed to keep the premises, including equipment and fixtures of every nature, in good repair, would insure them, and at the end of the term "yield and deliver up the same in like condition as when taken." It also provided that the lessor would rebuild in the event of fire. Defendant erected a building of block and stucco, on a substantial concrete foundation which it wished to remove at the expiration of the term; plaintiff sought to enjoin. *Held*, it was unreasonable to find from the lease that the parties intended such fixture as a permanent accession to the freehold, and it was removable as a trade fixture. *Cameron v. Oakland County Gas & Oil Co.*, 277 Mich. 442, 269 N. W. 227 (1936).

The general rule that everything annexed to the land becomes part of the freehold [1] has from an early day been relaxed in the landlord-tenant cases in favor of the tenant's right to remove certain fixtures. Thus it is held that the tenant may remove fixtures annexed by him in furtherance of his trade,[2] those annexed for agricultural purposes,[3] and also those annexed for domestic or ornamental purposes,[4] with a few qualifications and limitations.[5] The Michigan Supreme Court, however, has not limited itself to these well-recognized exceptions, and has held that any annexations made by the tenant in furtherance of the purposes for which the premises were leased may be removed,[6] probably subject to the same limitations that obtain generally. The parties to a lease may,

[1] 1 TIFFANY, REAL PROPERTY, 2d ed., § 266, p. 903 (1920).

[2] Poole's Case, 1 Salk. 368, 91 Eng. Rep. 320 (1693); Lawton v. Lawton, 3 Atk. 13, 26 Eng. Rep. 811 (1743); Lord Dudley v. Lord Warde, 1 Amb. 113, 27 Eng. Rep. 73 (1751); Van Ness v. Pacard, 2 Pet. (27 U. S.) 137, 7 L. Ed. 374 (1829). The exception, as stated in Poole's case, is based "in favor of trade and to encourage industry."

[3] Although the English courts refused to extend the trade analogy to agricultural fixtures in Elwes v. Maw, 3 East 38, 102 Eng. Rep. 510 (1802), the American courts readily did so. Van Ness v. Pacard, 2 Pet. (27 U. S.) 137, 7 L. Ed. 374 (1829); Harkness v. Sears, 26 Ala. 493 (1855); McMath v. Levy, 74 Miss. 450, 21 So. 9 (1896); Waldauer v. Parks, 141 Miss. 617, 106 So. 881 (1926); 1 TIFFANY, REAL PROPERTY, § 272, p. 931 (1920).

[4] 1 TIFFANY, REAL PROPERTY, § 272, p. 929 (1920). The reason given is that it enables the tenant to annex fixtures to make his dwelling more comfortable and attractive. WALSH, THE LAW OF PROPERTY, 2d ed., § 54, p. 69 (1927); Hayford v. Wentworth, 97 Me. 347, 54 A. 940 (1903); Hartberg v. American Founders' Securities Co., 212 Wis. 104, 249 N. W. 48 (1933).

[5] If removal injures the freehold, it is precluded. Friedlander v. Ryder, 30 Neb. 783, 47 N. W. 83 (1890); DeLano v. Tennent, 138 Wash. 39, 244 P. 273 (1926); cases collected in 9 L. R. A. 700 (1890), and 30 L. R. A. (N. S.) 576 (1911). Same if removal materially injures the fixture. Collamore v. Gillis, 149 Mass. 578, 22 N. E. 46 (1889). *Contra*: Baker v. McClurg, 198 Ill. 28, 64 N. E. 701, 59 L. R. A. 131 (1902).

[6] Hayward v. School District No. 9 of Township of Hope, 139 Mich. 539 at 542, 102 N. W. 999 (1905): "for it is settled in this State that the tenant owns buildings erected by him on leased land, 'and in furtherance of the purpose for which the premises were leased,' " quoting from Kerr v. Kingsbury, 39 Mich. 150 at 153 (1878); Osborn v. Potter, 101 Mich. 300, 59 N. W. 606 (1894).

however, covenant that fixtures of any type annexed shall remain part of the freehold, and such provisions are construed strictly in favor of the lessee.[7] These cases probably involve the normal situation in which the lessor or both parties have drawn up the lease. It is an established rule of contract law that an ambiguous contract is construed strictly against the party who draws it up and creates the ambiguity.[8] From that point of view, since the lessee drew up the lease in the case under discussion, it would not be unreasonable to say that the parties had entered the agreement in anticipation that the lessee erect the building and leave it to the lessor as part of the freehold. Such a result would give effect to the provisions stated above, included in the lease, relative to insurance, repairs, etc.[9] But the court seems to have surmounted that obstacle somehow, and interpreted the lease in favor of the lessee. It is submitted that the result reached is indicative of the court's intention to adhere to the lenient policy it has heretofore established in favor of the tenant, and only in the face of very express language to the contrary will it decide otherwise. The result is desirable from a practical view point, in that it avoids possible forfeiture to the lessor in doubtful cases, encourages more practicable uses to which the premises may be put by the tenant, and requires the landlord to expressly protect any interest he may have beyond these rules, a not unreasonable burden to place upon him.

[7] Ex Parte Morrow, 17 Fed. Cas. 845, No. 9850 (1869); Montello Brick Co. v. Trexler, (C. C. A. 3rd, 1909) 167 F. 482; Rasch v. Safe Deposit & Trust Co., 136 Md. 435, 111 A. 121 (1920); Wright v. La May, 155 Mich. 119, 118 N. W. 964 (1908); cases collected in 42 L. R. A. (N. S.) 546 (1913).

[8] 3 WILLISTON, CONTRACTS, rev. ed., § 621, p. 1788 (1936).

[9] The dissenting opinion so stated.