not comply in all respects with the requirements of the lease. It is a further example of the perils of exercising break clauses. In *Siemens*, however, the tenant was very lucky. Siemens had a 25 year lease of business premises from Friends Life. The break clause in the lease provided that Siemens could break the lease on the break date, subject to satisfaction of certain pre-conditions, by giving 6–12 months' written notice. The lease said that the break notice must be expressed to be given under s.24(2) of the Landlord and Tenant Act 1954. Siemens served written notice on Friends Life within the notice period. However, the notice did not refer to s.24(2) and Friends Life contended that it was, therefore, invalid.

Siemens' argument had two heads. First, that there was no such thing as a notice under s 24(2) and that, therefore, a requirement for one was meaningless. Siemens claimed that all that was therefore required, on a proper construction of the break clause, was a notice such as the one they had given. Secondly, Siemens argued that even if the break clause did require the notice to refer to s.24(2), it did not provide that a non-compliant notice was invalid.

N. Strauss QC (sitting as a deputy judge of the High Court) felt that the notice should have contained the required wording of s.24. As such, he held that it was a non-compliant notice. However, he agreed with the tenant that this non-compliance did not amount to invalidity. The conditions for the break did not explicitly require the notice to be in the required form, only that it be served within the notice period. Thus, the notice was held to have been effective in ending the lease.

This again, while specific to its own facts, serves as a reminder to ensure that a lease is drafted carefully, with consequences for non-compliance with conditions clearly set out. Extreme care also needs to be taken when serving a break notice to make sure that it complies with the requirements of the lease. It is far better to do that than end up in expensive litigation arguing whether a notice was valid or not.

William Thompson
Senior Associate, *Real Estate Department, Field Fisher Waterhouse LLP*

Will Hunnam
Trainee, *Real Estate Department, Field Fisher Waterhouse LLP*

Steel Yourself for Litigation: A Modern Take on Chattels and Fixtures

Peel Land and Property (Ports No.3) Ltd v TS Sheerness Steel Ltd [2013] EWHC 1658 (Ch)

℔ Business tenancies; Chattels; Fixtures; Plant and machinery; Steel industry; Tenants' rights

In the case of Peel Land and Property (Ports No 3) Ltd v TS Sheerness Steel Ltd *[2013] EWHC 1658 (Ch), the High Court was asked to decide whether the tenant of the Sheerness Steel Mill in Kent was entitled to remove large parts of the plant during the currency of the lease. The tenant claimed that the items in question were either chattels, or were fixtures of a type that the tenant was entitled to remove. The landlord claimed that the express terms of the lease prevented the tenant from removing tenant's fixtures.*

The case is welcome as decisions dealing with this aspect of the law come along relatively rarely. There were plenty of cases in the 19th century in which the distinction between chattels

and fixtures was considered. There have, however, been few recent cases—especially cases where the items in dispute are as large and complex as components of a steel mill.

The law relating to chattels and fixtures

The law relating to chattels and fixtures is entirely judge-made. A number of tests have been developed, each of which is simple to state, but not so simple to apply in practice. Furthermore, the cases are sometimes contradictory.

Whether by accident or design, *Peel Land* was heard by Morgan J. who was, until appointed to the High Court, an experienced landlord and tenant silk. His judgment is, therefore, very persuasive. In trying to reconcile the various tests concerning chattels and fixtures, his Lordship considered that it was "appropriate to quote from a number of paragraphs in *Woodfall on Landlord and Tenant*", which "very helpfully digests the many cases on this subject and gives a large number of examples of how the principles have been applied." The writer, therefore, has no embarrassment in adopting Morgan J.'s initial analysis of the distinction between chattels and fixtures, at [36]:

> "A chattel is personal property. A fixture is something which was formerly a chattel but which has become real property because it has 'acceded to the realty', to which it is considered to be annexed. If an item is held to be a fixture and therefore real property, that is not necessarily the end of [the] story. Some fixtures can be detached, whereupon they cease to be real property and become personal property again. The general law allows some persons in some circumstances to detach a fixture in this way. This particularly applies in the law of landlord and tenant where a tenant is sometimes able to detach a fixture and restore to it its chattel status, with the result that the chattel is then owned outright by the tenant."

His Lordship considered briefly the two common law tests for distinguishing between chattels and fixtures: the degree of annexation and the purpose of annexation. He quoted with obvious approval the section in *Woodfall* that states that recent cases have favoured the test relating to the purpose of annexation, as objectively ascertained (in other words, the parties' motives, and even the terms agreed between them, cannot affect the question whether, in law, the chattel has become a fixture). The test is whether the article has been affixed to the property for a temporary purpose and the better enjoyment of it as a chattel or with a view to effecting a permanent improvement of the property. It is concisely summed up in the dictum of Blackburn J. in *Holland v Hodgson* (1872) L.R. 7 C.P. 328:

> "Thus blocks of stone placed on the top of one another without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, although the same stones, if deposited in a builder's yard and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels."

Morgan J. also referred to the House of Lords' case of *Elitestone Ltd v Morris* [1997] 1 W.L.R. 687. In that case, the court said that there are not just two categories of items—chattels and fixtures—but that there is a third category, which consists of items that have become part and parcel of the land itself. The distinction is vital, as such items are not fixtures and, therefore, do not fall within the type of items that tenants may sever and return to their status as chattels. Examples of such items are fixed plate glass windows forming the exterior of a building. (Many cases before 1997 confused fixtures with items that had become part of the land itself, meaning that some of those cases are now considered to have been incorrectly decided.)

Tenant's fixtures

In certain cases, a chattel that a tenant has brought onto land and affixed to the land so that it becomes part of the land can later be removed by the tenant. This is where the chattel was affixed either for the purpose of the tenant's trade or for mere ornament and convenience, and can be physically removed without causing substantial damage to the land and without losing its essential utility as a result of the removal. Such an item is termed a "tenant's fixture". This phrase may be misleading, as the fixture surely belongs to the landlord while it is affixed to the land. It only becomes the tenant's property once again after it has been severed from the land. (However, neither the cases nor the textbooks expressly deal with ownership of tenant's fixtures before they have been severed, so it is difficult to be certain about this.)

The fact that a tenant's fixture must not lose its essential utility as a result of the removal means that it must not have become part of the structure of the building, in accordance with the House of Lords' views in *Elitestone Ltd v Morris*. In effect, it must be usable once severed, even if it has to be taken apart in order to remove it and then reconstructed in a different location.

Applying the law to the facts

Morgan J. identified nine questions to ask in relation to the items in dispute in the case:

1. Are any of the items chattels?
2. In relation to the disputed items which are not chattels, do they meet the established requirements as to removeability? This second question will involve some or all of the following further questions:
3. For the purposes of answering the following questions, what is the physical extent of the item to be considered?
4. In relation to the item to be considered, was it installed for the purpose of the trade of the tenant under the lease?
5. Can the item be physically severed and, if so, with what degree of difficulty?
6. What is the effect of severance of the item on the premises which remain and is that effect remediable?
7. What is the effect of severance of the item on the item itself and is that effect remediable?
8. Does the item when severed retain its essential character and utility?
9. If the item would otherwise be a removable tenant's or trade fixture, do the terms of the lease override the tenant's right of removal? (This is considered below.)

It was then necessary for his Lordship to consider in minute detail each of the disputed items one by one, or in groups, to consider their status. Four examples of such deliberations are:

- An electric arc furnace weighing some 195 tonnes, used for melting scrap metal. It rested on a concrete plinth which was affixed to the building. The furnace could be removed by unbolting or cutting bolts, but the plinth could not be removed without destroying it. Morgan J. held the status of the furnace to be borderline, but "on the removable tenant's fixture side of the line". The plinth was part of the structure.
- A continuous bar mill some 330m long and 50m wide, weighing in excess of 800 tons. It could, however, be removed without damaging itself or the building in which it was situated. The fact that it was "large, bulky and complex" to remove did not prevent it being a tenant's fixture.

- Cranes that ran outside on rails, but were not affixed to the rails, were either chattels or tenant's fixtures. The track on which the crane ran, being clipped to a concrete bed, was not a chattel, but was still a tenant's fixture, being removable without damage to itself or the land beneath.
- Transformers that could be removed simply by lifting them off their bases were tenant's fixtures, despite their taking between two and four days to remove at an estimated cost of £10,000 each.

Ultimately, his Lordship held that all of the items in dispute were either chattels or tenant's fixtures, despite their size, weight and complexity:

> "The fact that the item is bulky and awkward and that the exercise of severance is complex does not necessarily mean that the item cannot be, in law, a removable tenant's fixture."

The terms of the lease

Having considered the items individually and concluded that they were all either chattels or tenant's fixtures, Morgan J. had to look at the lease to decide whether its terms prevented the tenant from removing the tenant's fixtures (there was no suggestion that the terms of the lease could prevent the tenant from removing its own chattels).

His Lordship quoted from *Woodfall* to the effect that there are two general principles to be considered in this context. First, there is nothing unlawful in parties agreeing to modify or exclude the tenant's right to remove fixtures. Secondly, any such modification or exclusion must be in clear language. If there is any doubt, the tenant's right to remove fixtures will not be affected.

The landlord used two arguments. First, as the lease under which the tenant occupied the premises required the tenant to erect "a building consisting of a fully equipped steelmaking plant and rolling mill capable of producing not less than 50,000 tons of steel products per annum", this prevented the tenant from later removing the machinery that comprised the mill—logically (said the landlord), the tenant would have been entitled to remove the machinery the day after signing the lease. The landlord's difficulty was that this argument was contrary to two decisions of the Court of Appeal that effectively said that a covenant by a tenant to install items has no impact on the tenant's right later to remove such items as are tenant's fixtures. Accordingly, this argument failed.

The landlord's second argument failed as well. This was that the alterations covenant in the lease had been breached. This required the tenant (among other things) not to make any alterations or improvements, or to make any changes or additions, to the premises without the landlord's consent. After considering the context of the provision, and other provisions of the lease, Morgan J. held that the alterations covenant was not in sufficiently clear terms to regulate the tenant's ability to remove tenant's fixtures.

Conclusion

This case is of great interest. Although it does not lay down any new law, it is a rare example of a court having to rule in extremely unusual circumstances on whether items are chattels or fixtures, given that it cannot be usual for there to be a dispute over the removal, piece by piece, of the machinery within a steel mill.

Stop press

The landlord has successfully appealed the part of the first-instance decision relating to the interpretation of the alterations covenant. We are told that the appeal should be heard in the first few months of 2014. In the meantime, the landlord applied for an injunction to prevent the tenant removing the steelworks machinery. The application was again heard by Morgan J., who refused the injunction on the ground that the landlord had not shown that it would suffer any harm if the injunction were refused.

Peter J. G. Williams
Freelance trainer and lecturer; Editorial Board Member