Tenant's Fixtures—An Update

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Peel Land and Property (Ports No.3) Ltd v TS Sheerness Steel Ltd [2014] EWCA 100

The Court of Appeal has overturned part of the first instance decision in the case of Peel Land and Property (Ports No 3) Ltd v TS Sheerness Steel Ltd *[2013] EWHC 1658 (Ch), which formed the basis of the writer's article entitled "Steel Yourself for Litigation: A Modern Take on Chattels and Fixtures" (2013) 17(6) L. & T. Rev 221.*

Readers will recall that the case concerned a steelworks at Sheerness in Kent. The court was asked to decide whether large pieces of plant involved in the steelmaking process were chattels or fixtures and, if fixtures, whether they were landlord's or tenant's fixtures. That part of the judgment was not appealed.

The court had also been asked to decide whether the tenant was prohibited from removing tenant's fixtures by the terms of the lease, and it was this that formed the subject of the appeal. On a strict interpretation of the lease, the Court of Appeal decided unanimously that the lease *did* prohibit the tenant from removing tenant's fixtures during the term granted by the lease—contrary to the decision reached by Morgan J. at first instance. It rejected the tenant's argument that an express provision to that effect would be required. It was sufficient that the covenant against alterations provided that no alterations or improvements were to be made save in connection with the use of the premises for whatever industrial processes the landlord had approved from time to time. The Court of Appeal interpreted this covenant as extending to removal of tenant's fixtures during the term (a separate provision expressly permitted the removal of tenant's fixtures at the end of the term).

In reaching this decision, the court disapproved an extract from *Woodfall*, which will now need to be updated. *Woodfall* (para.13.153) currently cites with approval an extract from *Lambourn v McLellon* [1903] 2 Ch. 268, in which Vaughan Williams L.J. had said:

> "If the landlord wishes to restrict his tenant's ordinary right to remove trade machinery or fixtures attached to the demised premises … the landlord must say so in plain language. If the language used leaves matters doubtful, the ordinary right of the tenant to remove trade fixtures will not be affected."

Rimer L.J. in this case stated:

> "I do not regard [the statement above], uttered only by one Lord Justice, and not expressly embraced by the others, as establishing any principle of a binding nature. That said, I certainly do not disagree with it. I do not, however, consider that it can be elevated to the status of a proposition that, for example, nothing but language expressly imposing a restriction on the removal of tenant's fixtures … will be effective to impose such a restriction."

Outcome

The outcome of the case is curious. The tenant effectively succeeded on all the points of detail relating to the distinction between fixtures and chattels, which accounted for some 90 per cent of the page count of the first instance decision. All the disputed items were, at the very least, tenant's fixtures.

But in spite of that, the landlord won with a knock-out blow from the Court of Appeal. The lease was interpreted as providing that the tenant was not entitled to remove tenant's fixtures during the term, unless required in connection with the use of the premises (which, of course, was not the case here). The distinction between chattels and tenant's fixtures turned out to be much more important than it had appeared to be at first instance.

The law is stated as at February 21, 2014.