

Leased Heating Equipment: Chattel or Fixture?



By Brian Madigan LL.B.

The Ontario Court of Appeal recently quoted with approval a decision of the House of Lords (Melluish). In this case, a company leased plant and machinery (including central heating equipment) to a housing authority for installation in its subsidized townhouses which were then leased to tenants.

The Court of Appeal considered this case when making its decision in the *City of Mississauga v. GTAA*.

The equipment leases between the company and the owner/landlord provided that the leased equipment would remain personal or moveable property that the company would continue to own it, notwithstanding that the equipment might have become affixed to any land or building. Apparently, the purpose of this specific statement was to ensure that the company could depreciate the equipment for tax purposes and could repossess the equipment, if required.

The House of Lords confirmed that the equipment had indeed become a fixture, and that the taxpayer company could not claim depreciation, because the equipment had become attached to the land and was therefore, in law, owned by the housing authority, notwithstanding any agreement between the parties to the contrary.

Lord Browne-Wilkinson held as follows:

- The equipment in these cases was attached to the land in such a manner that, to all outward appearance, it formed part of the land and was intended to do so.
- Such fixtures are, in law, owned by the owner of the land. It was suggested in argument that this result did not follow if it could be demonstrated that, as between the owner of the land and the person fixing the chattel to it, there was a common intention that the chattel should not belong to the owner of the land.
- It was said that clause 3.10 of the master lease disclosed such an intention in the present cases...
- the intention of the parties as to the ownership of the chattels fixed to the

land is only material so far as such intention can be presumed from the degree and object of annexation.

- The terms expressly or implicitly agreed between the fixer of the chattel and the owner of the land cannot affect the determination of the question whether, in law, the chattel has become a fixture and therefore in law belongs to the owner of the soil....
- The terms of such agreement will regulate the contractual rights to sever the chattel from the land as between the parties to the contract and, where an equitable right is conferred by the contract, as against certain third parties.
- But such agreement cannot prevent the chattel, once fixed, becoming in law part of the land and as such owned by the owner of the land so long as it remains fixed.

The Courts in Canada have followed these same common law principles. If a chattel becomes a fixture by reason of its affixation or annexation to the lands, then it is to be treated by all third parties as a fixture. The third parties have no notice of the private deal between the landlord and tenant, and they don't have to follow it.

As far as taxation, by-laws, bankruptcy and priorities, the law of real property will prevail. The lease is interesting but not relevant.

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