

1973 S.C. Op. Atty. Gen. 228 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3575, 1973 WL 21032

Office of the Attorney General

State of South Carolina

Opinion No. 3575

July 17, 1973

***1 The determining factor in construing an item as a fixture or a trade fixture, is the intention with which the fixture was attached to the realty. A specific determination would have to be made in individual cases.**

Chief Appraiser

S. C. State Highway Dept.

You have requested that this office furnish you with a definition of 'trade fixtures' for your use as a guide in awarding just compensation in an imminent domain proceeding.

Generally fixtures are defined as 'a chattel attached to realty, becoming accessory to it and part and parcel of it, and ordinarily the property of the owner of the land.' Black's Law Dictionary. Similarly defined in *Big Sespe Oil Company v. Cochran* 276 Fed. 216, 225, 'A thing as being to be affixed land when it is attached to it by its roots, imbedded in it, permanently resting upon it, or permanently attached to what is thus permanent as by means of cement, plaster, nails, bolts or screws.' *Planters Bank v. Lummus Cotton Gin*, 132 S.C. 16, 128 S.E. 876, sets forth the following elements as necessary to make a chattel a part of the realty:

1. Actual or constructive annexation to the realty or to something appurtenant thereto;
2. Appropriation of the chattel to the use or purpose to that part of the realty with which it is connected;
3. Intention of the parties making the annexation to make the chattel a permanent accession to the freehold, this intention being inferred from the nature of the article affixed, in relation in situation of the party asking the annexation, and the purpose for which the annexation has been made.

Further stated in this same case was, 'the intention of the party making the attachment is generally considered most conclusive, but all the circumstances should be considered.'

The reasoning and holding of the *Planters Bank* case was substantially followed in *Carroll v. Britt* 227 S.C. 9, 86 S.E. 2d 612, and in *American Telephone and Telegraph Company v. George F. Muller* 229 Fed. Supp. 157. The latter case, a 1968 South Carolina case further stating, 'modern authorities increasingly or assimilating all these factors into the controlling issue of intention and consider annexation and adaptation as indications of intention.'

An analogy perhaps is found in insurance law, where it is generally held that in the absence of an expressed exception, insurance on a building covers those things which have by annexation become a part of the realty. C.J.S. *Insurance* § 316, wherein it states 'under a policy of property insurance expressly extending its coverage to 'fixtures' a furnace and its controls system, a linotype machine used in a printing business, a motion picture machine and amplifiers in a theatre have been held to constitute fixtures, while the contrary result was reached as to the following: chairs, wall-to-wall carpeting, furniture, shelves and counters, an iron safe, a soda fountain, and property not directly attached to the insured premises, such as an underground electric cable, a boiler house, and storage bins, fences, gates, and the roofs of outbuildings in a coal yard.' In Appleman, *Insurance Law and Practice*, § 2295, amplifiers and moving picture machines anchored into concrete were held to be fixtures. The law of this State is in accordance with the general law that the intention with which an item is affixed to property is greatly determinative in concluding whether or not it is to be considered as a fixture.

*2 South Carolina along with a majority opinions elsewhere further classes fixtures into ‘trade fixtures.’ As defined in Black's Law Dictionary, ‘articles placed in or attached to rented buildings by the tenant, to prosecute the trade of business for which he occupies the premises, are to be used in connection with such business or promote convenience and efficiency in conducting it.’ Such chattel as merchants usually possess and annexed to the premises usually occupied by them to enable them to store, handle and display their goods which are generally removable without material injury to the premises.’ As is stated in [Carroll v. Britt](#) 227 S.C. 9, 86 S.E. 2nd 612, ‘whether or not a chattel is regarded as a trade fixture is a question of the intention with which they were affixed to the realty; and not upon the character or mode of physical annexation to the realty. Trade fixtures are regarded as personal rather than real property.’ Further supporting the conclusion that trade fixtures are exempt from the general law regarding fixtures, See *City of Greenville v. Washington American L. B. Club*, 205 S.C. 495, 32 S.E. 2nd 77, which stated, ‘an important exemption to the general rule to the common law that whatever is once affixed to the freehold becomes part of it, and cannot afterwards be removed except by him who is entitled to the inheritance, exist in the case of structures erected or chattels affixed for the purpose of trade or manufacture.’ See also *Saye et. al v. Hill* 100 S.C. 21, 84 S.E. 307, 308; *Planters Bank v. Globe Rutgers Fire Insurance Company* 156 S.C. 453, 153, S.E. 385. *The City of Greenville* case also established the conclusion that whether a chattel is regarded as a trade fixture or not is a matter of intention, when it said, ‘The question whether particular structures or articles are removable as trade fixtures depends solely upon whether they are designed for the purpose of trade; and this turns on the intention with which they were annexed to the realty; and not upon the character or mode of the physical annexation to the realty.’ As is also stated in *Saye et. al v. Hill* (supra) ‘houses are frequently built and expensive machinery installed therein with every appearance of permanency; yet it is done under a license from the owner of the soil, or under the lease thereof, and under agreement for and with the intention of removal at the expiration of the license or lease. In such cases they are not fixtures.’

In conclusion it appears that the determining factor in construing an item as a fixture or a trade fixture, is the intention with which the fixture was attached to the realty. The above authorities can be used as a guide for determining if an item is in fact a ‘trade fixture,’ however, a specific determination would have to be made in individual cases.

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