

FIXTURE VS. TRADE FIXTURE Rely on the law to resolve these landlord/tenant disputes



PETER C. SALES (PSALES@BABC.COM) IS AN ASSOCIATE ON THE LITIGATION TEAM AT BRADLEY ARANT BOULT CUMMINGS, LLP, SPECIALIZING IN TRIAL LITIGATION AND COUNSELING.

IN TODAY'S ECONOMIC CLIMATE THERE HAS BEEN UNPRECEDENTED TENANT TURNOVER. This turnover often is not a result of an expiring lease, but instead due to nonpayment of rent resulting from business failure. As a result of this increase in business failures, both tenant and landlord are often left fighting over the bones of an otherwise dead company.

One issue becoming more and more prevalent in today's landlord/tenant disputes is whether something is a "fixture" or a "trade fixture." The resolution of this issue can determine whether the tenant or the landlord gets to keep the "stuff." This is an issue because, generally under common law, once something becomes a fixture, it belongs to the landlord. However, there is an exception to this rule. See *Supreme Oil Co. v. Metropolitan Transp. Authority*, 1997 WL 607544 (S.D. N.Y. 1997); *Fondren v/ K/L Complex Ltd.*, 800 P.2d 719 (Nev. 1990).

Typically, a trade fixture is something that the tenant has affixed to the freehold, which can be removed without damage, and which was affixed for the purpose of carrying on the tenant's particular line of business. As such, unless the lease specifically speaks to the contrary, it is a possession of the tenant and may be removed.

Conversely, if something is affixed to the freehold and either cannot be removed without significant damage or was not directly related to the tenant's business, then it is a fixture and

belongs to the landlord.

Fondren, the case cited above, is a very instructive example of this situation. The court faced the question of whether certain equipment and improvements installed on the leased premises in connection with the operation of lessee's restaurant constituted trade fixtures. The equipment and improvements in question were principally kitchen equipment. In determining whether the equipment was a fixture or a trade fixture, the court used a three-factor analysis: (1) annexation; (2) adaptation; and (3) intent. The court held the three-part test did not establish that the kitchen equipment in question was a fixture. In so holding, the court found that the equipment was only attached via electric, gas, and/or water hookups and was not actually attached to the premises (i.e., annexation); the equipment was basic and necessary for the operation of the of the tenant's restaurant business (i.e., adaptation); and it was not clear that it was the intent of the parties that the equipment would remain with the premises after termination of the lease. Therefore, the court concluded the items of kitchen equipment in question were trade fixtures and were the property of the tenant.

Specific lease language can alter the application of the common law. To the extent the landlord or tenant have concern about the application of the common law to specific items that will be installed on the premises of a property, this issue should be raised and dealt with during lease negotiations. ■



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