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THAT'S MY PROPERTY: WHO OWNS THE FIXTURES AT LEASE EXPIRATION?

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In order to facilitate a smooth transition between commercial tenants, it is important for landlords to understand their rights regarding items attached to their property. Generally, a lease will govern these rights. However, if the lease is silent on the issue, articles annexed to the property deemed "fixtures" must stay with the property, while articles deemed "trade fixtures" may be removed by a vacating tenant.

In New Jersey, a fixture is an object that "become[s] so related to particular real estate that an interest... arises under real estate law." N.J.S.A. 12A:2A-309(1)(a). In contrast, an article may be considered to be a trade fixture if: (1) the article is annexed to the property for the purpose of aiding in the conduct of a trade or business exercised on the premises; and (2) the article is capable of removal from the premises without material injury thereto. Handler v. Horns, 2 N.J. 18, 24-25 (1949). As such, an important distinction between fixtures and trade fixtures is whether removal of the item will cause material injury to the premises. See e.g. GMC v. City of Linden, 150 N.J. 522, 534 (1997). In applying this test, courts infer that if removal of an article would cause material injury to the premises, the parties must have intended for the article to remain beyond the lease term. Id.

A typical conflict involving this nuanced distinction may involve a vacating tenant removing an item from the leased premises under the assumption that it was (1) attached to the premises for the purpose of conducting a trade or business; and (2) capable of removal without material injury to the premises. A landlord may dispute one or more of these assumptions, arguing that the article was not used in the conduct of business (that it was in fact attached to improve the structure) or is not capable of removal without material injury to the premises. Over the years, vacating tenants have attempted to remove countless items from leased premises, including air conditioning systems, irrigation systems, bolted down light fixtures and even circuit breaker panels, by arguing these items were trade fixtures. See e.g. In re Jackson Tanker Corp., 69 B.R. 850 (Bankr. S.D.N.Y. 1987).

However, it isn't difficult to imagine a hypothetical where the traditional landlord and tenant arguments are reversed – that is, where the tenant argues that the article must remain with the property and the landlord argues that the tenant is responsible for its removal. This unusual fact pattern may especially arise where the tenant's business is specialized in nature, and where equipment is not easily removed from the premises.

For example, Landlord rents out space to Tenant, who plans on operating a restaurant. The lease does not specifically address what does and does not constitute a trade fixture. Tenant plans on installing a walk-

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in freezer and other specialized, complex systems. After several years of operating, Tenant declines to renew the lease, closes, and vacates the premises. Tenant removes the furniture, appliances not fixed to the premises and other items it deems to be trade fixtures and leaves the walk-in freezer infrastructure. Tenant refuses to remove the walk-in freezer, arguing its removal will cause substantial damage to the premises. Unable to re-let the premises to a restaurant tenant, Landlord is left with a walk-in freezer occupying a substantial portion of the premises.

It is important that during the lease negotiation, landlords think carefully about the business their prospective tenant is in, the kinds of equipment the tenant will install and what will happen to that equipment upon termination of the lease. This same thought process applies when landlords receive requests for alterations. In the above hypothetical, Landlord could have avoided being left with a walk-in freezer and a less than desirable space if it addressed the issue during negotiation of the lease. A discussion with prospective tenants concerning the specific kinds equipment the tenant will install is always a good idea, followed by specifications and drawings for approval. Landlords are wise to reduce these conversations to writing, and specifically address each party's expectations regarding the disposition of specific equipment when the lease inevitably comes to an end. As always, an ounce of prevention is worth a pound of cure.

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