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Is a Bison Squeeze Real or Personal Property? A Question of Law or a Question of Interpretation?

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Cases Considered:

Olson v. Angermeier, 2009 ABQB 356

One of the first things a law student in first year property law class learns is the distinction between real property and personal property, the most basic of divisions in this area of law. The distinction is usually taught with reference to a case or two about the law of fixtures. The law of fixtures is the area of law that encompasses the legal rules that apply to transform personal property to real property and *vice versa*. There are hundreds of cases concerned with classifying something as real or personal property. The controversies usually arise in connection with the sale of real property. For example, is the dishwasher real or personal property? Does it go with the house on the sale of the real property or can the seller move it out with his or her other personal property? This type of question was the issue in *Olson v. Angermeier*. Was a bison squeeze a chattel (personal property) or a fixture (real property)? Answering that question would determine whether or not the bison squeeze was part of the sale of the NE¼-9-62-5-W5th.

However, although the question was a usual one, the way it was answered was unusual, with the court addressing the question as a one of interpretation rather than as a question of law. The court's conclusion is therefore wrong. Something that merely rests on the land by virtue of only its own weight, as did the bison squeeze in this case, cannot be a fixture and part of the real property. (The vendor and purchaser of the real property could, of course, decide the sell the something as part of the deal, but that does not change its characterization as a fixture or chattel.) The well settled law governing this issue that the court referred to briefly and incompletely makes it clear that the question of the classification of something as a fixture or a chattel is a question of law, and the parties' subjective intent is irrelevant. In other words, the issue and its determination are in the realm of property law and not contract law.

What is a bison squeeze? Bison are routinely handled to maintain the health of individual animals and the herd, and to meet the requirements of various regulatory agencies for diseases such as tuberculosis and brucellosis. See the book, *The Well-being of Farm Animals*, by G. John Benson and Bernard E. Rollin (Blackwell, 2004), which examines the ethical and economic importance of production animal well-being and pain management, and J.Lanier, T.Grandin, A.Chaffin, and T.Chaffin, "Training American Bison (Bison


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bison) Calves" October/November/December 1999, Bison World, at 94-99. According to Bensen and Rollin (at 127, 132) a bison is considered an extremely flighty and excitable animal: "Bison may react very violently when moving through a handling facility. . . [F]rightened bison will sometimes gore and injure each other when they are in a confined space." A squeeze is a restraining device that is normally part of a system designed to safeguard bison when they are being handled. A squeeze chute is used to hold an animal for vaccination, testing, administering medications or other work that needs to be done when the animal is confined. The bison is held in a head catch and the sides of the chute can be squeezed together to further confine the animal. These photographs of a bison squeeze chute are courtesy of Morand Industries Ltd of Onoway, Alberta, a company that specializes in livestock handling equipment and the company that built the bison squeeze at issue in the case.

The plaintiffs, Kenneth Olson and Gail Olson, were the vendors of the NE¼-9-62-5-W5th which they sold to the defendant purchasers, Dwayne Angermeier and Rebecca Angermeier, for $400,000 in November 2006. The agreement, drafted by the Olson's lawyer, had this to say about personal property (chattels) on the land:

> 15. The following chattels are included in the sale price and shall pass to the Purchaser upon possession:
>
> All appliances and window coverings.
>
> 16. The Vendors shall have the right to remove the following from the said premises:
>
> Upright freezer and small freezer.
>
> 17. The Vendors shall have the right to store their farm implements as well as smaller farm items on the property until their farm auction which will take place on or before May 31, 2007.
>
> 18. The Vendors will be granted access to the corrals and handling system until all the bison have been weaned, ear tagged and otherwise processed for sale or moved off the property on or before April 30, 2007.

The agreement did not define the term “handling system” used in clause 18 or indicate whether it included the bison squeeze. Neither was the bison squeeze specifically listed in clause 15 as a chattel which would pass to the Angermeiers. Neither was it listed as an item in clause 16 that the Olsons could take with them. The parties did not therefore explicitly contract for the retention or transfer of the squeeze. In the absence of an agreement by the parties, did the squeeze stay with the vendors as a chattel or go to the purchasers as a fixture?

Mr. Justice Donald Lee did not spend a lot of time on the law that provides the rules to answer the questions. He merely notes (at para. 6):

> The law is well settled that articles not otherwise attached to the land than by their own weight are not considered to be part of the land, unless the circumstances are such to show that they were intended to be part of the land. If a chattel is resting on its own weight, it is presumed to be a chattel and is not a fixture.

Although not cited, these rules are an abbreviated version of the principles laid down in the leading case, *Stack v. T. Eaton Co*. (1902), 4 O.L.R. 335 at 338 (C.A.). More than one hundred years ago, Chief Justice Meredith took the following to be settled law:

> (1) That articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as shew that they were intended to be part of the land.
>
> (2) That articles affixed to the land even slightly are to be considered part of the land unless the circumstances are such as to shew that they were intended to continue chattels.
>
> (3) That the circumstances necessary to be shewn to alter the *prima facie* character of the articles are circumstances which shew the degree of annexation and object of such annexation, which are patent to all to see.
>
> (4) That the intention of the person affixing the article to the soil is material only so far as it can be presumed from the degree and object of the annexation.

Note that there are two different starting points for the legal analysis in any particular case and where you start determines who bears the burden of proof. If Rule 1 applies, then the starting point is that the articles are chattels and are not part of the land, but if Rule 2 applies, you start with the position that the articles are fixtures and part of the land. In *Olson v. Angermeier*, the bison chute must have been resting on the ground under its own weight only. Justice Lee does not say so explicitly, although he notes (at para. 28) that "Mr. Olson testified that the bison squeeze is a free standing, unaffixed, unattached, freely moveable and portable item that rests on the ground on its own weight." This evidence must have been accepted, because Justice Lee states (at para 6) that "the onus to show that the chattel was part of the land falls upon the Defendants in this case." The starting point must have been that Rule 1 applied and the squeeze was not to be considered part of the real property. The Angermeiers — the defendants — who were arguing that it was part of the real property and therefore theirs when they bought the farm, were therefore the party that had to prove the circumstances were such as to show that it was intended to be part of the land.

Once the starting point is determined, each fixtures case normally becomes very fact specific. Facts are necessary in order to determine what "the circumstances" show about the parties' intent. Not just any facts will do, however. According to Rule 3, the relevant circumstances or facts are those "which shew the degree of annexation and object of such annexation, which are patent to all to see." The requirement that the circumstances be “patent for all to see” means that the relevant intent is an objective intent. How does it appear to reasonable people looking at the chattel/fixture? Rule 4 makes it even clearer that the parties’ intention is relevant only if can be presumed from degree of annexation and object of annexation. The "patent for all to see" requirement protects third parties dealing with property. They should be able to tell if something like a bison squeeze is a fixture or not just by looking at it.

Not only must the relevant circumstances be patent for all to see, however. They must also show the degree of annexation or the object of annexation according to both Rules 3 and 4. What is the

meaning of "degree of annexation"? This is about how much physical attachment there is in fact between the something in question and the real property. It is about nuts and bolts and welding and the like. What about the meaning of “object (or purpose) of annexation”? Here the court looks at the purpose of setting up the something in question. Was the purpose to enhance the value of the real property or for the owner to make better use of the land for the purposes for which it was being used? If so, then the something would be part of the real property. However, if the something was attached for the purpose of better using the chattel as a chattel, then it would be personal property.

As noted, once the test in law is set out, each fixtures case normally becomes a matter of setting out the details of the degree and object of annexation. See, for example, the oft-cited *LaSalle Recreation Ltd.* v. *Canadian Camdex Investments Ltd.* (1969), 68 W.W.R. 339 (B.C.C.A.) where the details of how carpet was physically attached to the floors and stairs of a hotel occupied much of the decision. In *Olson v. Angermeier*, however, Justice Lee does not discuss any facts about the bison squeeze's attachment to the land. The degree of annexation appears to have been non-existent, as it would be if the squeeze simply rested on the ground of its own weight.

The focus therefore should have been on the object or purpose of annexation — not the parties' subjective intent, but facts that make the Olson's purpose of setting up the bison squeeze as they did "patent for all to see." In reviewing the evidence, however, Justice Lee focuses upon the parties' subjective intent and what they agreed or did not agree to. For example, Mr. Olson testified that he could not remember whether the posters that he put up in the vicinity of his farm advertising the land for sale stated that the “handling system” was part of the property being sold. Mr. Angermeier, on the other hand, was clear that the poster he picked up and brought home to show his wife contained a reference to the bison or animal “handling system” as being included in the sale. With respect, however, this evidence goes to the question of whether the parties agreed to the sale of the squeeze with the real property, regardless of whether the squeeze was a fixture or a chattel.

It is difficult to see why any attention is paid to quite a bit of the evidence, given the legal test set out in *Stack v. Eaton*. For example, Justice Lee recounts (in para. 10) that Mr. Olson gave the term “handling system” a restrictive meaning:

> He indicated to the Court that the term referred to wooden corrals, alleys, gates and chutes but not to the bison squeeze which sat at the end of those wooden structures that was used to restrain and otherwise handle animals. Mr. Olson differentiated between the meaning of the word “handling” and the word “restrain” as they pertain to animals.

Is that relevant? Mr. Angermeier testified that he always considered the bison squeeze to be part of the handling system that he and his wife purchased from the Olsons. His wife testified to the same effect. None of this testimony is relevant under the *Stack v. Eaton* test. If the bison squeeze was part of the handling system and the handling system was intended by the parties to go with the real property, then it should have been listed in clause 15 of the parties' agreement. It was not.

This is therefore an exceptional fixtures case. It does not describe the bison squeeze (except to note at para. 42 that this one weighed 3,100 pounds). It does not discuss the purpose of installing the squeeze where it was. It spends little time discussing if the squeeze was attached to the land or to another piece of equipment. Basically, instead of being dealt with as a property case, it is

treated as a contract case. The talk is all about what the parties intended. Justice Lee applies the *contra proferendum* rule, a contract rule of law, to interpret the parties' agreement in favour of the purchasers because the contract in question was drafted by the vendors' lawyer and an uncertainty existed in the terms of the written contract. Justice Lee concluded, based on the parties' contradictory evidence about what was or was not on the posters and what they meant by "handling system" that the purchasers did satisfy the burden on them of proving that the bison squeeze was to be treated as an integral part of the “handling system” and that the handling system was included in the sale. This is a contract approach.

Justice Lee did not determine whether the circumstances were such as to show are that the bison squeeze was "intended" to be part of the land in the sense that *Stack v. Eaton* uses the idea of "intended." He never discussed the degree of annexation — apparently nil — or the object of annexation — because there was none. Under the well-settled rules of *Stack v. Eaton* therefore, the bison squeeze should have retained its *prima facie* nature, namely, that of a chattel or personal property. Any reasonable person driving by or around the NE¼-9-62-5-W5th would have seen a bison squeeze sitting on the ground, much like in the photograph at the beginning of this post. Is it "patent for all to see" that such a piece of equipment was part of the land? Hardly. It is not attached. In property, and as a question of law, the bison squeeze was a chattel and not part of the real property.

Property rights are good against the world, as opposed to contract rights which have a far shorter reach, being good only against the parties to specific agreements. The *Stack v. Eaton* test is a property rights test to help sort out whether something is a fixture and therefore part of the real property that stays with the rest of the real property on its sale or whether it goes with the vendor when the vendor leaves. It requires "intent" be "patent for all to see" because people other than the parties to the real property sale might be affected by the characterization. For example, does a mortgagee financing the purchase and who takes security on the real property get an interest in the "something" or not? *Stack v. Eaton* demands that the facts showing the amount of annexation to the land or the purpose of annexation must be obvious for all to see because "all" is who is bound by property rights.