

[Cite as *General Electric Co., Lighting Div. v. American Mechanical Contractors, Corp.*, 2001-Ohio-8796.]

COURT OF APPEALS

ELEVENTH DISTRICT

LAKE COUNTY, OHIO

J U D G E S

GENERAL ELECTRIC COMPANY,
LIGHTING DIVISION,

Plaintiff-Appellant,

- vs -

AMERICAN MECHANICAL
CONTRACTORS, CORP.,

Defendant-Appellee.

HON. WILLIAM M. O'NEILL, P.J.,
HON. JUDITH A. CHRISTLEY, J.,
HON. ROBERT A. NADER, J.

ACCELERATED
CASE NO. 2000-L-211

DISSENTING OPINION

O'NEILL, P.J.

For the reasons that follow, I must respectfully dissent. As this court held in *G & L Investments v. Designer's Workshop, Inc.* (June 26, 1998), Lake App. No. 97-L-072, 1998 WL 553213, at *3, whether a particular item is "real or personal property is a mixed question of law and fact." The judgment of the trial court should be reversed, as there remains a question of fact whether the furnaces were fixtures or personal property. By definition, the resolution of that question will require a weighing of conflicting evidence.

That is an impermissible exercise under the umbrella of a motion for summary judgment. Civ.R. 56 requires that all evidence must be construed in the light most favorable to the nonmoving party and, if that is done in this matter, the judgment will be reversed as a matter of law.

The trial court correctly stated in its judgment entry that “[t]he most important factor in determining whether personal property is a fixture is the intention of the party ***.” The trial court was merely restating the law of Ohio as defined by the Supreme Court of Ohio in the 1800’s. In opposing the motion for summary judgment, appellant, General Electric, stated unequivocally that their intention was to annex the furnaces in question to the property, thereby making them fixtures. For the purposes of summary judgment only, that statement is true, as a matter of law. The trial court clearly decided to disbelieve this “true” statement when it conducted a weighing exercise by holding that “*** but [General Electric] lists said furnaces as equipment on financial documents and calculates the damage to each furnace as if it were personal property.” Thus, the trial court was faced with competing evidence which tended to both prove and challenge the same evidence. It is impermissible for a trial court to weigh any evidence in a summary judgment exercise. Once the trial court chose one interpretation of the evidence over another, it had departed from the realm of summary judgment and entered into the arena of fact finder.

The judgment should be reversed.

PRESIDING JUDGE WILLIAM M. O'NEILL