[Cite as *Canton Fin. v. Pritt*, 2002-Ohio-2645.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF WAYNE	)	

CANTON FINANCIAL

Appellant

v.

ALLAN S. PRITT

Appellee

C.A. No. 01CA0048

APPEAL FROM JUDGMENT
ENTERED IN THE
WAYNE COUNTY
MUNICIPAL COURT
COUNTY OF WAYNE, OHIO
CASE No. CVF 01 01 0084

DECISION AND JOURNAL ENTRY

Dated: May 29, 2002

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

PER CURIAM.

{¶1} Appellant, Canton Financial, appeals from the judgment of the Wayne County Municipal Court. This Court reverses.

{¶2} On January 18, 2001, Appellant filed a complaint against Appellee, Allan S. Pritt, asserting that Appellee wrongfully retained collateral, namely, a water softener and a drinking system. Thereafter, Appellant moved for summary judgment, which the trial court denied. On June 29, 2001, the magistrate determined that the water softener and the drinking system were fixtures and, therefore, entered a proposed decision in favor of Appellee. Appellant objected to the magistrate's proposed decision. Subsequently, on August 21, 2001, the trial court adopted the magistrate's proposed decision. Appellant timely appeals raising one assignment of error for review.

{¶3} Before addressing the merits of the appeal, this Court notes that Appellee did not file an appellate brief. Therefore, this Court assumes that the facts as stated in Appellant's appellate brief are true, and this Court's judgment is based on the facts as stated. See App.R. 18(C).

ASSIGNMENT OF ERROR

{¶4} "The Wayne County Municipal Court erred in finding that the subject collateral was a permanent fixture and not subject to removal by Appellant."

{¶5} In its sole assignment of error, Appellant avers that the water softener and drinking system can easily be removed; therefore, the municipal court

erred in finding that the water softener and the drinking system were fixtures and not subject to removal. This Court agrees.

{¶6} "A fixture is an item of property which was a chattel but which has been so affixed to realty for a combined functional use that it has become a part and parcel of it." *Holland Furnace Co. v. Trumbull Savings & Loan Co*. (1939), 135 Ohio St. 48, paragraph one of the syllabus. Accordingly, whether an item is a chattel or a fixture is a mixed question of law and fact. *Kim v. Pyrofax Gas Corp*. (Feb. 3, 1988), 9th Dist. No. 1619. An appellate court will give deference to a trial court's determination on issues regarding facts; however, issues concerning legal conclusions will be reviewed de novo. *G & L Investments v. Designer's Workshop, Inc*. (June 26, 1998), 11th Dist. No. 97-L-072.

{¶7} The Ohio Supreme Court outlined a tripartite test for determining whether an item has become a fixture:

{¶8} "(1) Actual annexation to the realty, or something appurtenant thereto.

{¶9} "(2) Appropriation to the use or purpose of that part of the realty with which it is connected.

{¶10} "(3) The intention of the party making the annexation, to make the article a permanent accession to the freehold." *Teaff v. Hewitt* (1853), 1 Ohio St. 511, 530.

{¶11} Despite the three legal requirements outlined in *Teaff*, this general rule has been examined and refined by the Ohio Supreme Court over the years. For example, in *Mansheter v. Boehm* (1974), 37 Ohio St.2d 68, the Court delineated several factors a court may use when determining whether an item has become a fixture. Specifically, the factors include:

{¶12} "[t]he nature of the property; the manner in which it is annexed to the realty; the purpose for which the annexation is made; the intention of the annexing party to make the property a part of the realty; the degree of difficulty and extent of any loss involved in removing the property from the realty; and the damage to the severed property which such removal would cause." Id. at paragraph two of the syllabus.

{¶13} Turning to the present case, the first requirement of *Teaff* is physical attachment to the realty or something appurtenant to it. *Teaff*, 1 Ohio St. at 530. Moreover, slight or constructive attachment is sufficient when the other two elements are established. *Holland Furnace*, 135 Ohio St. at 52-53; *Mansheter*, 37 Ohio St.2d. at 73. Although it may be argued that constructive attachment is sufficient to satisfy the physical attachment requirement, the water softener and the drinking system were not constructively attached to the realty. See *Holland Furnace*, 135 Ohio St. at 52-53; *Mansheter*, 37 Ohio St.2d. at 73.

{¶14} Upon a review of the transcript, it is apparent that the water softener and the drinking system could be readily unattached and moved. At the hearing,

Tom Cooksey ("Cooksey") testified that the water softener and the drinking system are generally rented; therefore, they are constructed to be quickly disconnected without damage to the structure. He further stated that a large number of the individuals who purchase the water softener and the drinking system want to take the water softener and the drinking system with them upon relocation. As a result, he stated that the water softener and the drinking system must be able to be quickly disconnected and moved to the new location. Due to the impermanent nature of the water softener and the drinking system, they are not physically attached to the realty.

{¶15} Next, *Teaff* requires that the water softener and drinking system be primarily devoted to the use, or purpose, of the realty. *Teaff*, 1 Ohio St. at 530. The mere fact that the water quality would be improved, as a result of the water softener and the drinking system, does not necessarily mean that water would not be available absent such a system. Furthermore, a clear test does not exist for determining whether water is usable. Accordingly, the water softener and drinking system were not devoted to the use, or purpose, of the realty. The second prong of the *Teaff* test is not satisfied.

{¶16} Finally, it must be determined whether Appellee intended to make the water softener and drinking system a permanent accession to the freehold. *Teaff*, 1 Ohio St. 530. As seen through the testimony of Cooksey, the water softener and the drinking system are easy to disconnect and move. Thus, the water

softener and the drinking system do not become a permanent part of the realty and meet this requirement.

{¶17} Due to the portable nature of the water softener and the drinking system, the lack of damage when removed, and the absence of a clear meeting of the minds as to whether the water softener and the drinking system were to be fixtures, leads to the conclusion that the water softener and the drinking system are not fixtures and, therefore, are subject to removal. Accordingly, Appellant's sole assignment or error is sustained.

{¶18} Appellant's sole assignment of error is sustained. The judgment of the Wayne County Municipal Court is reversed.

Judgment reversed.

LYNN C. SLABY

FOR THE COURT

SLABY, P. J.

WHITMORE, J. CONCURS

CARR, J. DISSENTS SAYING:

{¶19} I respectfully dissent as I disagree with the majority's holding that the water softener and the drinking system are not fixtures and, therefore, subject to removal.

{¶20} As the majority has correctly noted in its opinion, a tripartite test exists to determine whether an item has become a fixture. See *Teaff v. Hewitt* (1853), 1 Ohio St. 511, 530. The three prongs of this test include:

{¶21} "(1) Actual annexation to the realty, or something appurtenant thereto.

{¶22} "(2) Appropriation to the use or purpose of that part of the realty with which it is connected.

{¶23} "(3) The intention of the party making the annexation, to make the article a permanent accession to the freehold." Id.

{¶24} In regard to the first prong, the requirement of physical attachment has been reduced in importance, and slight or constructive attachment is sufficient. *Holland Furnace Co. v. Trumbull Savings & Loan Co.* (1939), 135 Ohio St. 48, 52-53; *Mansheter v Boehm* (1974), 37 Ohio St.2d 68, 73. "Whether the items at issue [are] real or personal property is a mixed question of law and fact. *** On issues regarding the facts, we defer to the trial court, but on issues relating to legal conclusions, we review the decision de novo." *G & L Investments v. Designers Workshop, Inc.* (June 26, 1998), 11th Dist. No. 97-L-072.

{¶25} The trial court found that Appellee demonstrated annexation and that "the system is clearly annexed to the realty." The transcript of proceedings indicates that the water softener and the drinking system were installed in two

separate locations in Appellee's home: (1) under the sink; and (2) "where the water comes into the *** home." Obviously, a water softener and a drinking system would have to be connected to existing plumbing in a house to some degree in order to function. Despite this testimony and the trial court's specific finding of annexation, the majority finds no annexation exists.

{¶26} Additionally, the water softener and the drinking system were devoted to the use, or purpose, of the realty. *Teaff*, 1 Ohio St. at 530. In fact, the trial court specifically found the water was unusable without the system and a new system would have to be installed were this one removed. Testimony supported that Appellee's water supply was not usable or drinkable. Consequently, Appellee purchased the water softener and the drinking system to provide water, which could be used for drinking and laundry purposes.

{¶27} Lastly, the intent to make a chattel a fixture involves the intent to "devote the chattel to the use and service of the land or structure already a part of the land, in such manner to enhance the serviceability of the whole as a permanent unit of property to whatever use it may be devoted." *Zangerle v. Standard Oil Co. of Ohio* (1945), 144 Ohio St. 506, 519. Appellee purchased the water softener and the drinking system to obtain water that was usable and drinkable. Specifically, Appellee stated that he "couldn't even wash clothes in [the water] before" he purchased the water softener and the drinking system. The trial court found that Appellee intended to make the water softener and the drinking system a permanent

part of the realty. Since Appellee devoted the water softener and the drinking system to the use and service of the realty in order to enhance the serviceability of the whole, the final element of the *Teaff* test has been satisfied.

{¶28} Accordingly, I would affirm the judgment of the Wayne County Municipal Court.

APPEARANCES:

STEVEN SCHWARTZ, Attorney at Law, 202 Sixth Street, NW, Canton, Ohio 44702, for Appellant.

ALAN S. PRITT, Pro Se, 8494 Shilling Rd., West Salem, Ohio 44287, Appellee.