IN THE COURT OF APPEALS OF IOWA

FILED
APR 25 1989
CLERK SUPREME COURT

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GLADYS A. WEPLER,	)	
Plaintiff,	)	
vs.	)	
ADRIAN STRAND, ROGER RAUSCH, et al.,	)	
Defendants.	)	
ADRIAN STRAND,	)	8-646
Cross-Claimant-Appellant,	)	88-595
vs.	)	
ROGER RAUSCH,	)	
Defendant to Cross-Claim-Appellee.	)	

Appeal from the Iowa District Court for Winneshiek County (Equity No. 21521), Roger E. Mahan, Judge.

Property owner appeals summary judgment granted in favor of a tenant. **REVERSED AND REMANDED.**

James Burns of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellee Rausch.

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Karl G. Knudson, Cresco, for appellant Strand.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J.

This dispute arose when the property owner filed a claim against a tenant for removing fixtures from the real estate. The tenant responded that the disputed items were his personal property and, as such, were properly removed. The district court granted the tenant a summary judgment, and the owner has appealed. He contends summary judgment was unwarranted because there are genuine issues of material fact concerning these items.

Our task is to determine whether a genuine issue of material fact exists and whether the law was correctly applied. Meylor v. Brown, 281 N.W.2d 632, 634 (Iowa 1979). A summary judgment is reversed only if it appears from the entire record that there is an unresolved issue of material fact. Id.

We view the underlying facts contained in the pleadings and the inferences to be drawn therefrom in the light most favorable to the party opposing the motion. Enochs v. City of Des Moines, 314 N.W.2d 378, 379-80 (Iowa 1982). If the conflict in the record concerns only legal consequences flowing from undisputed facts, entry of summary judgment is proper. Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988).

The property owner-appellant points out at least seven issues of material fact concerning the ownership of the property removed by the tenant. It is sufficient for our

purposes to note that whether certain types of personal property attached to the realty by a tenant are fixtures is ordinarily a question of fact. Marty v. Champlin, 240 Iowa 325, 334-35, 36 N.W.2d 360, 365 (1949). The question becomes a matter of law where the items are governed by express provisions of a lease. Id. Here, express provisions do not govern the property in question.

Three general tests should be applied in determining whether a particular object is a trade fixture or not. The tests are: (1) Annexation to the realty, either actual or constructive; (2) adaptation or application to the use or purpose to which that part of the realty to which it is connected is appropriated; and (3) intention to make the article a permanent accession to the freehold. Id. In the instant case, in light of the evidence presented, there is a genuine issue of material fact regarding the property in question and whether the tenant was entitled to take these items as his own. Therefore, we find that summary judgment was improper. We reverse the decision of the district court and remand this case for a trial on all the issues claimed.

REVERSED AND REMANDED.