Neutral Citation Number: [2014] EWCA Civ 100

Case No: A3/2013/1993

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
Mr Justice Morgan
[2013] EWHC 1658 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/02/2014

Before :

LORD JUSTICE RIMER
LORD JUSTICE McFARLANE
and
LORD JUSTICE VOS

- -

Between :

PEEL LAND AND PROPERTY (PORTS NO. 3) LIMITED	**Appellant**
- and -	
TS SHEERNESS LIMITED	**Respondent**

- -

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

- -

Mr Jonathan Seitler QC and **Ms Tiffany Scott** (instructed by **Gordons LLP**) for the **Appellant**
Mr Kirk Reynolds QC and **Mr Greville Healey** (instructed by **McGuirewoods London LLP**) for the **Respondent**

Hearing date: 20 January 2014

- -

Approved Judgment

Judgment
As Approved by the Court

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Lord Justice Rimer :

Introduction

1. This appeal, brought with the permission of the judge, Morgan J, is against paragraph 3(c) of his order dated 15 July 2013 made following the delivery of his judgment dated 14 June 2013 ([2013] EWHC 1658 (Ch)). The point is one of construction arising under a lease. It was but one of many questions the judge had to answer.

2. The claimant/appellant is the landlord, Peel Land and Property (Ports No. 3) Limited ('Peel'). The defendant/respondent is the tenant, TS Sheerness Steel Limited ('TSS'). The essence of the dispute is whether, as the judge held, TSS is at liberty to sever, and deal as the legal and beneficial owner with, the items that paragraph 3(b) of the order identified as tenant's fixtures (there is now no dispute that they are such fixtures). Peel's case, contrary to the judge's decision, is that TSS does not have an unqualified right so to sever and deal with the items. It claims that TSS is only so entitled (i) at the end, or sooner determination, of the term of the lease, or (ii) during the currency of the term, in connection with the use of the demised premises for such industrial purpose as may from time to time be approved by Peel. Clause 2(11) of the lease makes plain TSS's right under (i), on which there is no issue. As for (ii), Peel says that that is made plain by clause 2(6). TSS disagrees.

The facts

3. TSS is the tenant of a steel recycling plant at Wellmarsh, Sheerness, Isle of Sheppey, Kent ('the premises'). It holds the premises under a building lease dated 1 February 1971 made between Medway Ports Authority as landlord and Sheerness Finance Company Limited as tenant. The term of the 1971 lease is 125 years from 1968. The lease was varied by a lease dated 15 October 1973 between the same parties under which an adjoining area of land with a building on it was leased to the tenant for the same term of years as under the 1971 lease. Both leases are, in the material respects, in the same terms; and both were varied by a deed of 14 July 1992. I need hereafter to refer only to the 1971 lease ('the lease').

4. Peel acquired the reversion on 16 July 2008 and is the current landlord. A former tenant was Thamesteel Limited ('Thamesteel'), which went into administration on 25 January 2012. Peel then commenced these proceedings against Thamesteel, seeking an order restraining it from selling, disposing of, interfering with or otherwise dealing with the plant and machinery on the premises. TSS is a special purpose vehicle established to acquire Thamesteel's business and assets and it took an assignment of the lease on 7 June 2012, following which it was substituted as the defendant. The proceedings raised issues as to the legal status of many items of plant and machinery. The judge found that all but one of such items were either chattels (those listed in paragraph 3(a) of the order) or tenant's fixtures (those listed in paragraph 3(b)). There is no challenge to those conclusions. The challenge is as to his holding as to TSS's right to deal with the tenant's fixtures during the currency of the term. That requires a consideration of the terms of the lease.

The terms of the lease

5. The lease is a form of building lease. The parcels clause demised to the tenant:

> ‘ALL THAT piece or parcel of land situate at [Sheerness, Kent] shown on the plan annexed hereto and thereon edged red (hereinafter called “the Site”) Together with the Buildings erected thereon or on some part or parts thereof (hereinafter called “the said premises”) …’

The upper case ‘B’ in ‘the Buildings’ might suggest that the words would be defined, but they are not. The site comprised about 50 acres of industrial land. The parties agree that there were three buildings on the site at the time of the lease, as was recorded in Nourse LJ’s judgment in *Sheerness Steel Co PLC v. Medway Ports Authority* [1992] 1 EGLR 133, at 133.

6. By clause 1, the tenant covenanted with the landlord to:

> ‘… erect and complete by [31 December 1973] a new building consisting of a fully equipped steelmaking plant and rolling mill capable of producing not less than [50,000] tons of steel products per annum (hereinafter called “the Works”) …’

And by clause 1(2) the tenant covenanted that:

> ‘The Works shall be carried out in all respects in a substantial and workmanlike manner and to the reasonable satisfaction of the Lessor’s Surveyor or Architect (whose fees shall be borne by the Tenant) and in accordance with:
>
> > (a) detailed plans elevations sections specifications and materials based thereon to be previously submitted to and approved in writing from time to time by the Lessor’s Surveyor or Architect (whose approval shall not be unreasonably withheld or delayed) (whose fees shall be paid by the Tenant) …’.

7. Clause 2 contained further tenant’s covenants, of which the material ones are the following (in particular, clause 2(6)):

> ‘(6) Not at any time during the said term to erect make or maintain or suffer to be erected made or maintained any building erection alterations or improvements nor to make or suffer to be made any change or addition whatsoever in or to the said premises save in connection with the use of the premises for the purpose of steel making steel rolling and operations ancillary thereto
>
> (7) To keep the said premises and all other buildings erected on the said premises or on some part or parts thereof the fixtures and fittings and all additions thereto in good and substantial repair and condition and to paint such parts of the exterior thereof as are normally painted not less than once in every seven years …
>
> (11) At the end or sooner determination of the said term to yield up the said premises so repaired and maintained amended and kept as aforesaid together with all additions and improvements made thereto in the meantime and all fixtures and fittings of every kind in or upon the said premises or which during the said term may be affixed or fastened to or upon the same except tenants or trade fixtures …
>
> (13) To permit the Lessors their agents surveyors workmen and other persons … to enter upon the said premises … during the continuance of this lease …

(c) To take inventories of the Landlord's fixtures

(d) To view the condition of the said premises and to give or leave notice in writing upon the said premises for the Tenant of all defects and wants of repair or removal of fixtures then and there found And the Tenant will within three months or as soon thereafter as may be reasonably possible after every such notice well and sufficiently repair and make good and reinstate in accordance with the covenants in that behalf hereinbefore contained all such defects and wants of repair and removal of fixtures whereof notice shall have been so given or left as aforesaid

(14) Not to use or occupy the said premises other than for the purposes of steel making steel rolling and operations ancillary thereto or for such other purposes as may from time to time be approved by the Lessors (such approval not to be unreasonably withheld) …

(21) (a) At all times during the continuance of the term … to keep the said premises and all buildings now or hereafter to be erected thereon … and the Lessors' fixtures therein insured in the full rebuilding value thereof …

(b) In case the said premises or any part thereof shall at any time … be destroyed or damaged by the insured risks then and as often as the same shall happen to lay out with all reasonable speed all moneys received in respect of such insurance in rebuilding and otherwise reinstating the said premises …'.

8. The 1992 deed of variation made various amendments to the lease. The only one I need to refer to is that amending clause 2(6) to provide as follows:

'(6) Not at any time during the said term to erect make or suffer to be erected made or maintained any building erection alterations or improvements nor to make or suffer to be made any change or addition whatsoever in or to the said premises save in connection with the use of the said premises for *such industrial purpose as may from time to time be approved by the Lessors under clause 2(14)'* (My emphasis)

The amendment substituted the emphasised words for '*the purposes of steel making steel rolling and operations ancillary thereto*' in the original form of clause 2(6). One reason for it was probably because if the landlord were to consent under clause 2(14) to the premises being used other than 'for the purposes of steel making steel rolling and operations ancillary thereto', clause 2(6) in its original form would have prevented the tenant from making alterations etc in connection with such new permitted use.

The operations carried out on the premises

9. The premises are not being currently used for steel making, steel rolling or ancillary purposes but it is not suggested that that means that TSS is in breach of covenant. Whilst by clause 1 the tenant covenanted to erect and equip a new building on the site consisting of a plant and mill 'capable' of producing not less than 50,000 tons of steel products a year, the tenant did not positively covenant so to use the premises: it did no more than commit itself to a restrictive covenant not to use or occupy them *other* than

for such purposes or other approved purposes. The dispute has arisen because Peel is convinced that Thamesteel intended, and that now its successor TSS intends, to strip the premises of the substantial, and valuable, tenant's fixtures that form part of the steel-making plant and sell them. The judge held that TSS is so entitled; and following his order to that effect, and pending the decision on this appeal, Peel sought an interim injunction from the judge restraining any such stripping of the premises. For reasons expressed in a typically comprehensive judgment, the judge refused such an injunction (see [2013] EWHC 2689 (Ch)). TSS's alleged intentions with regard to the premises are not a matter with which this appeal is concerned. The only question is whether TSS is, if it wishes to, entitled to sever and remove the tenant's fixtures.

10. It will give a flavour of the steel making processes of which the premises are capable to quote from Morgan J's judgment:

> '76. In his report, Mr Singleton described the steel making processes which had been carried on upon the premises and for which the fixed plant had been used. The processes used scrap steel which was melted in an electric arc furnace. The molten steel was then poured into a ladle and this steel was reheated, with additives, using one of two ladle furnaces. This prepared molten steel was poured through a tundish, a refractory lined vessel, into a continuous casting machine where it was formed into the desired shape and size of a billet. The semi-molten billets were cut to the required lengths and cooled. The billets were later re-heated and processed further through the bar and rod mills. The bar mill comprised an 18 stand rolling mill where the billets were rolled smaller and stretched to the desired profile. The bar product was then cut to length and cooled. Bars that required to be further reduced to rods were passed to a 10 stand rod mill by a sophisticated conveying system. All of the above plant was serviced by electrical equipment, cooling systems, dust extraction and by cranes and other engineering equipment. Although Mr Singleton referred to the plant by reference to the 131 headings in the schedule attached to the Particulars of Claim, he stated that these were the principal parts of an integrated steelmaking plant so that the separation into numbered items belied the fact that the plant formed an integral unit. If one took away a part of that unit, then what remained ceased to be "steel recycling plant".'

We were told that the 'electric arc furnace' to which the judge there referred, one of the tenant's fixtures, is an item of plant weighing some 1,195 tonnes.

The appeal

11. There is no dispute as to the substantive law relating to fixtures so far as relevant. An object brought on to land, and fixed to it so as to become what in law is recognised as a 'fixture', becomes part of the land and remains part of it for so long as it remains fixed to it: *quicquid solo plantatur, solo cedit.* The original rule was that a fixture was irremovable by anyone with only a limited interest in the land. But that rule was then modified by exceptions of particular importance between landlords and tenants. Fixtures became sub-categorised as 'tenant's fixtures', which a tenant is entitled to remove, and as 'landlord's fixtures', which he is not. *Woodfall, Landlord and Tenant,* at 13.141, describes a 'tenant's fixture' as a chattel which is:

> '(a) annexed by a tenant to the land;

(b) is so annexed either for the purposes of his trade or for mere ornament and convenience; and

(c) physically capable of removal without causing substantial damage to the land and without losing its essential utility as a result of the removal.'

12. Whilst a tenant is in principle entitled to remove any tenant's fixtures, such right can be modified or excluded by the terms of the lease. As to this, the judge cited paragraph 13.153 from *Woodfall*:

> 'Contractual requirements to deliver up fixtures
>
> Many leases contain express covenants by the tenant to yield up the property at the end of the term together with all fixtures, or some similar phrase. Whether the phrase in question is sufficient to exclude the tenant's right to remove tenant's fixtures will depend on the construction of the particular covenant in question. Two general principles may, however, be stated. First there is nothing unlawful in parties agreeing to modify or exclude the tenant's right to remove fixtures. Secondly, "if the landlord wishes to restrict his tenant's ordinary right to remove trade machinery or fixtures attached to the demised premises … the landlord must say so in plain language. If the language used leaves matters doubtful, the ordinary right of the tenant to remove trade fixtures will not be affected." So a covenant by the tenant to install fixtures does not in itself prevent the tenant from removing such of them as are tenant's fixtures. ….'

The quotation in the penultimate sentence is identified in footnote 2 as from *Lambourn v. McLellan* [1903] 2 Ch 268, at 277, per Vaughan Williams LJ. The last sentence is supported in footnote 3 by references to *Mowat v. Hudson Bros Ltd* (1911) 105 LT 400 and *Young and Others v. Dalgety Plc* [1987] 1 EGLR 116.

13. The issue for the judge, and now for us, is whether TSS's *prima facie* right to remove the tenant's fixtures during the currency of the term of the lease was removed or modified by the provisions of the lease. The judge regarded the quoted paragraph from *Woodfall* as identifying the applicable principle. He first considered, and rejected, an argument by Peel that the right had been removed by the provisions of clause 1 of the lease, and he refused permission to appeal on that ground. He then considered Peel's argument that clause 2(6) had a like effect. He gave careful consideration to the language of clause 2(6), in the context of the lease as a whole, and his reasoning in [159] to [169] repays consideration. He concluded as follows:

> '169. Having reviewed all of the terms of the lease, including clause 2(6), and recalling the general legal principle that a provision (which is to take away from a tenant the right which the tenant would otherwise have to remove tenant's fixtures) must be expressed in clear terms, I have to determine whether clause 2(6) is in such terms. I consider that it is not sufficiently clear from the language of clause 2(6), read in the context of the lease as a whole, that the removal of a tenant's fixture is an alteration or a change "in or to the said premises" given the definition of that phrase and the absence of any reference to fixtures in clause 2(6). It follows that clause 2(6) does not regulate the tenant's ability to remove tenant's fixtures.'

14. The judge's permission to appeal was limited to Peel's argument under clause 2(6). Mr Seitler QC, in a succinct and lucid argument, advanced two submissions. First, he said that, contrary to any such suggestion in paragraph 13.153 of *Woodfall*, there is no rule of law that especially clear words must be used in a lease in order for a tenant's right to remove fixtures at any point during the term to be validly ousted. All that is required is language that, upon its ordinary construction, has that effect. Second, he said that in the present case the language of clause 2(6) of the lease is expressed in language that, according to its clear meaning, does have that effect.

15. As for Mr Seitler's first point, we were referred to two authorities. The first was *Lambourn v. McLellan* [1903] 2 Ch. 268. The tenant was a boot and shoe manufacturer. The repairing covenant imposed an obligation upon him, at the end or sooner determination of the term, to yield up the premises:

> '… together with all doors, locks, keys, bolts, bars, staples, hinges, iron pins, wainscots, hearths, stoves, marble and other chimney-pieces, slabs, shutters, fastenings, partitions, pipes, pumps, sinks, gutters of lead, posts, pales, rails, dressers, shelves, and all other erections, buildings, improvements, fixtures, and things which are now or which at any time during the said term … shall be fixed, fastened, or belong to the said messuage and premises or any part thereof.'

The tenant became bankrupt and his trustee, in whom the term vested, proposed to sell machinery the tenant had fixed to the premises. The landlord applied to restrain its removal and sale. Kekewich J held the machinery to be covered by the general words of the covenant ('all other erections … things') and found for the landlord.

16. The Court of Appeal allowed the trustee's appeal. Vaughan Williams LJ explained that the machinery was in the nature of a tenant's fixture. Down to the word 'shelves' in the covenant, the listed items were not obviously other than landlord's fixtures and so were anyway not removable by the tenant under the general law; and, he said, 'although some items might conceivably be of a removable nature, there is not one which might not just as well be an irremovable fixture'. Nowhere, however, was the word 'machinery' used. He continued, at 274:

> 'But when we find a lease of premises for the express purpose of their being used for the manufacture of boots and shoes by machinery, it is as a matter of business very difficult to believe that, if the landlord intended that the machinery should not be removable by the tenant, even when it was fixed in such a way as it is fixed here, he should not have said so in plain words. It is a very important matter, and yet machinery is not mentioned in the covenant. … If the tenant's right of removal is to be restricted, the restriction must be found in the general words' [ie in the words 'and all other erections, … or any part thereof'].

Vaughan Williams LJ then said that the machinery fell within neither the particular nor the general words of the covenant; nor did it fall within the latter words even if the *ejusdem generis* rule of interpretation was not applied, as that rule was explained in *Bishop v. Elliott* (1855) 11 Ex. 113 and *Dumergue v. Rumsey* (1863) 2 H. & C. 777. That was to the effect that (see 275):

> '… if you can find that the things described by particular words have some common characteristic which constitutes them a genus, you ought to limit the

> general words which follow them to things of that genus. In the present case all the articles which are described by the particular words have according to the natural meaning of the words the common characteristic of irremovability; and under these circumstances I think the general words should be applied only to articles which possess that characteristic.'

17. Quite apart from this rule, Vaughan Williams LJ explained, at 276, why he would anyway not interpret the general words of the covenant as including the machinery. The machines were not 'erections', 'improvements' or 'buildings'; and, as regards the word 'fixtures, looking at the covenant as a whole and bearing in mind the proper application of the doctrine of *ejusdem generis,* the court ought not to hold that removable machinery of the kind in question came within it. He concluded his judgment by saying, at 277:

> 'It is very desirable that we should lay down such a rule that landlords and tenants may know once for all that when a house is let to a tenant for the purposes of a trade, if the landlord wishes to restrict his tenant's ordinary right to remove trade machinery or fixtures attached to the demised premises, as these machines are, so as to be more conveniently used, and not placed there as an addition or improvement to the premises, the landlord must say so in plain language. If the language used leaves the matter doubtful, the ordinary right of the tenant to remove trade fixtures will not be affected.'

18. It is that paragraph from which *Woodfall* cites in its own paragraph 13.153 by way of an exposition of the general principle of interpretation it there sets out. Romer LJ, having had his doubts about the case, based his concurring judgment on the *ejusdem generis* principle applied in *Bishop v. Elliott*. So did Cozens-Hardy LJ, who also had doubts about the case.

19. Does *Lambourn v. McLellan* establish a principle that clear words are required in a lease if the tenant's ordinary right to remove tenant's fixtures is to be removed? The ratio of the case is, I consider, that the application of the *ejusdem generis* principle of interpretation to the language of the covenant required the words to be read as not extending to tenant's fixtures in the nature of the machines in question. It was only Vaughan Williams LJ who added a general statement as to the need for landlords to use 'plain language' if they wished to restrict the tenant's right to remove tenant's fixtures; and he added that if the language left the matter 'doubtful', that right would not be affected.

20. I do not regard that statement, uttered only by one Lord Justice and not expressly embraced by the others, as establishing any principle of a binding nature. That said, I certainly do not disagree with it. I do not, however, consider that it can be elevated to the status of a proposition that, for example, nothing but language *expressly* imposing a restriction on the removal of tenant's fixtures (or one or more of them) will be effective to impose such a restriction. Vaughan Williams LJ offered his rule in a case in which the court had apparently had doubts as to whether the list of items in the covenant included the machines in question (not surprisingly, bearing in mind that the list referred to 'fixtures'). It answered the question in favour of the tenant by applying the *ejusdem generis* principle. In his concluding statement, the Lord Justice was saying no more than that the approach to like questions in the future should be that, unless the language of the lease makes it clear that the tenant's right to remove

tenant's fixtures is ousted, the lease will not be so read: in such cases of doubt (including, for example, cases where the meaning is ambiguous), it will be construed against the landlord. I do not regard the statement as meaning, or intended to mean, any more than this.

21. The point was taken up in *In re British Red Ash Collieries, Limited* [1920] 1 Ch. 326. That was a straightforward case. The tenant had an agreement for a 21-year lease of land for working the coal in it. Clause 13 provided that at the end or sooner determination of the term all erections, fences and fixed machinery in the demised seams or on the surface of the premises should be left in good repair and condition by the tenant. The coal working was unprofitable and the holders of debentures issued by the tenant sued to enforce their security and obtained the appointment of a receiver, who sold the lease agreement together with the plant, machinery, fixtures, chattels and effects and paid the proceeds into court. The lessor asserted that certain of the sold items were 'fixed machinery' within the meaning of clause 13 and claimed the sale proceeds attributable to them.

22. Astbury J held that the items were 'fixed machinery' and were tenant's fixtures and that there was no clear language precluding their removal during the currency of the term (as had happened), although clause 13 did prohibit their removal at its end or sooner determination. He therefore found against the landlord. The Court of Appeal allowed the landlord's appeal. Sir Charles Swinfen Eady MR said that clause 13 proscribed the removal of the fixed machinery, which this machinery was. The case did not raise a 'general words' question as in cases such as *Bishop v. Elliott*: clause 13 included a specific description of the relevant items. He said, at 330, that *Lambourn v. McLellan* 'laid down a definite rule for the Court to follow. I agree', and quoted the guidance that Vaughan Williams LJ had given at the end of his judgment. The Master of the Rolls said the draftsman of the lease agreement may have had that guidance before him, as he had provided 'that the tenant shall not remove his machinery fixed on the demised premises. That is said in the plainest possible way'.

23. Scrutton LJ agreed. He said, at 332:

> 'I agree with the argument of the respondents' counsel that inasmuch as the lease is ordinarily prepared by the landlord, and the Court looks very favourably on the exemption in favour of trade fixtures, if the landlord wishes to get rid of the common law privilege to remove trade machinery he must do so in clear terms.'

He referred to *Lambourn v. McLellan,* noted that the one thing that the catalogue of the draftsman's words had not done was to mention the machinery, and said it was therefore not surprising that the court held that the tenant was not deprived of his right to remove trade fixtures. He continued, at 333:

> 'If you want to get rid of the privilege to remove trade machinery you must do so in clear terms. In this case the draftsman has said in one sentence that the fixed machinery is to be left.'

Eve J also agreed. He said the true construction of clause 13 was 'reasonably plain.'

24. Reverting to Mr Seitler's first submission (see [14] above), I would accept it. Mr Reynolds QC, for TSS, emphasised the firmness with which Vaughan Williams LJ in

Lambourn v. McLellan and Sir Charles Swinfen Eady MR in the *British Red Ash Collieries* case had emphasised the need for plain language if a lease is to be construed as ousting a tenant's right to remove tenant's fixtures. But the guidance provided by, or rule stated in, *Lambourn v. McLellan* amounts to no more than a statement that if a tenant's *prima facie* right to remove tenant's fixtures is to be ousted, the language of the lease must make that clear. The rule was not prescribing how such language should do so; and whether or not, in any case, it does make it clear must in my view be a question to be answered by a consideration of the language of the particular lease, applying to it the approach to the construction of contractual documents that Lord Hoffmann summarised in *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 WLR 896, at 912/913. If the outcome of that exercise is that the court arrives at a confident conclusion that the intention of the parties was that the tenant's right to remove tenant's fixtures was to be ousted, that will be the effect of the lease. If the court's conclusion is that the exercise leaves it unsure that that was the intention of the parties, or perhaps that the lease is ambiguous as to whether that was their intention, the right will not be removed. That is not a revolutionary concept: if a party to a document claims that it has the effect of removing the other party's common law rights, it is obvious that the document must make it clear that it does.

25. Mr Seitler's second submission was that clause 2(6) plainly does exclude TSS's rights to remove tenant's fixtures during the currency of the term. Before coming to that submission, I should refer briefly to the ground upon which the judge refused permission. I do so because it relates to a feature of the lease which might, apart from the authority to which the judge referred, perhaps be thought to lend support to Peel's case.

26. The point is this. Clauses 1(1) and (2) of the 1971 lease required the tenant, by 31 December 1973, to construct a new building consisting of a fully-equipped steelmaking plant and rolling mill capable of producing not less than 50,000 tons of steel products a year, such building works to be carried out to a particular specification. Peel's argument to the judge was that if that was the tenant's obligation, and (as was the fact) the plant included equipment in the nature of tenant's fixtures, it cannot have been the parties' intention that come 1 January 1974 the tenant would be at liberty to strip the tenant's fixtures out of the property and so undo the work it had covenanted to do under clause 1.

27. Unassisted by authority, I might well have found that argument compelling. However, the quotation from *Woodfall* in [12] above pronounced the opposite view and supported it by two decisions of the Court of Appeal, to which the judge was referred: *Mowats Ltd. v. Hudson Bros Ltd* (1911) 105 LT 400; and *Young and Others v. Dalgety Plc* [1987] 1 EGLR 116. There is no need to refer to them. The judge accepted that they foreclosed Peel's argument, he refused permission to appeal on the clause 1 point, and Peel did not renew its permission application on that ground before this court. I shall simply quote the judge's conclusion as to why he rejected the argument:

> '158. Accordingly, I will apply the reasoning in [the two authorities] in this case. Applying that reasoning, the fact that the tenant was under an obligation to construct a fully equipped steelmaking plant does not say anything about the tenant's ability to remove at any point in time such parts of that plant which

would be regarded as removable tenant's fixtures under the general law. In particular, an obligation to construct the plant does not mean that in law the fixtures are not removable by the tenant or that they are to be regarded as landlord's fixtures or that they are to be regarded as owned by the landlord. Having reached that conclusion, it is not necessary to consider whether it would be appropriate to distinguish between the plant which the tenant introduced into the premises in order to comply with clause 1 of the lease and plant which the tenant introduced later.'

28. Thus Peel's case that TSS is precluded during the currency of the term from removing any tenant's fixtures from the lease is not assisted, let alone supported, by the fact that such fixtures, or any of them, came to be installed on the premises in compliance with the tenant's obligations under clause 1. Peel had to identify other provisions in the lease precluding such right; and it claimed that clause 2(6) did the necessary work. Mr Seitler's argument in support of that proposition was a short one, and for its purpose it was not necessary to look other than at clause 2(6) in its original form, no change of the original use (that of steel making, steel rolling and ancillary operations) having been permitted. The argument ran as follows.

29. By clause 2(6) the tenant agreed during the currency of the term, so far as material, 'not … to… make … any … alterations … nor… any change … whatsoever in or to the said premises save in connection with the use of the said premises for [their permitted steel making purposes]'. The phrase 'the said premises' is defined in the parcels clause as meaning the demised site together with 'the Buildings erected thereon'. At the date of the lease, there were three buildings on the site, but clause 1 imposed an express obligation upon the tenant to carry out the construction works to which I have referred and to complete them by 31 December 1973. Those works included the construction of a new building; and Mr Seitler submitted that the definition of 'the said premises' included not just the buildings existing at the date of the lease, but also the building to be erected.

30. Since a new building becomes part of the land upon which it is built, and therefore must become part of 'the site' upon which it is built, there is, so it seems to me, a logical argument for the proposition that 'the said premises' ought to be interpreted in an 'always speaking' sense, and therefore as including new buildings erected on the site and, similarly, any new fixtures that may be installed on the site. The critical question, however, is whether the reference to 'the said premises' in clause 2(6) is in fact to be interpreted as intending to refer to the new building and fixtures. Mr Seitler submits that it is obvious that it is to be so interpreted; and, to the like question, Mr Reynolds initially accepted that it is, although he later submitted that, in the particular context of clause 2(6), it is not, and I shall have to return to that.

31. On the premise, however, that 'the said premises' in clause 2(6) included a reference to tenant's fixtures, Mr Seitler submitted that it followed that clause 2(6) imposed a restriction upon the removal of any such fixtures by TSS during the currency of the term. That was because any such removal would necessarily result in the making of alterations or a change to 'the said premises'. The only such alterations or change that clause 2(6) permits are, however, those 'in connection with the use of the said premises [for the permitted steel making purpose]', whereas it is not suggested that any alterations or change that TSS might at present wish to effect by the removal of the tenant's fixtures would be in such connection. Clause 2(6) therefore, it is said,

unambiguously imposes a bar, during the currency of the term, upon the removal by TSS of the tenant's fixtures save for a removal in connection with the use of the premises for a permitted use.

32. In response, Mr Reynolds placed comparative reliance on clause 2(11). That is the covenant as to TSS's obligation to yield up 'the said premises' at the end or sooner determination of the term. Clause 2(11) provides that 'the said premises' must be so yielded up 'together with all additions and improvements made thereto in the meantime *and all fixtures and fittings of every kind in or upon the said premises or which during the said term may be affixed or fastened to or upon the same except tenants or trade fixtures.'* Mr Reynolds made the point that the express reference to fixtures in that clause shows that 'the said premises' cannot there be read as impliedly including fixtures. If that were its sense, clause 2(11) need have said no more than that the yielding up obligation was as to 'the said premises except tenants or trade fixtures.' Clause 2(11) therefore justifies the attaching in clause 2(6) of a more limited meaning to 'the said premises' than Mr Seitler advanced.

33. Similar comparative reliance can be placed on clause 2(7). That is the repairing covenant that requires the tenant 'to keep the said premises *and all other buildings erected on the said premises … the fixtures and fittings and all additions thereto …'* in good repair. That perhaps makes Mr Reynolds' point more strongly. There is no doubt that 'the said premises' in the parcels clause includes the site and the original buildings. Clause 2(7) can be said to regard that as representing the limit of its sense since it considered it either necessary, or at least appropriate, expressly to extend the reach of the covenant to all additional buildings erected on the site (which would include the new building constructed pursuant to the clause 1 obligation), as well as to 'the fixtures and fittings' installed.

34. Thus the question arises: if in clauses 2(7) and 2(11) the parties thought it necessary expressly to expand the phrase 'the said premises' so as to catch the fixtures on the premises, why in clause 2(6) should the same phrase 'the said premises' be regarded as referring other than to the original buildings and site? If the answer is that it does refer merely to the original buildings and site, the removal of tenant's fixtures subsequently added would not amount to any proscribed alteration or change to them. That is because clause 2(6) should interpreted as only proscribing alterations or changes to the original buildings and site in their state at the commencement of the lease; whereas the removal of fixtures that were later installed would not amount to such alterations or changes.

35. The judge noted the difference in language between clause 2(6) on the one hand and clauses 2(7) and (11) on the other, which he said served to emphasise that clause 2(6), unlike the other two clauses, did not expressly refer to fixtures. He noted that clause 2(7), the repairing covenant, should be interpreted so as to apply to such fixtures as are, from time to time, on the premises, and that it did not itself carry with it any implied prohibition on the removal of tenant's fixtures from the premises. He said that clause 2(11) made clear the tenant's entitlement to remove tenant's fixtures at the end of the term, and said that if Peel was right about the construction of clause 2(6) that would prevent the tenant from beginning to remove tenant's fixtures before the end of the term in preparation for its vacating of the premises at the end of the term. He noted that whereas clause 2(13)(d) referred to the landlord's right to view 'the condition of the said premises' and give notice to the tenant of the 'removal of

fixtures', that might, by reason of the terms of clause 2(13)(c), be a reference only to landlord's fixtures. And he noted that clause 2(21) limited the insurance obligation to the buildings and 'Lessors' fixtures'. His overall conclusion was that, considering clause 2(6) in the context of the 1971 lease as a whole, its language did not make it sufficiently clear that the removal of a tenant's fixture would constitute an alteration or change of the nature proscribed by that clause, given the definition of 'the said premises' in the parcels clause and the absence of any reference to fixtures in clause 2(6).

36. I can readily see how a semantic comparison and analysis of the various provisions of the 1971 lease that I have set out at [7] above, and in which the judge engaged, can lead easily to a sense of uncertainty as to whether the phrase 'the said premises' in clause 2(6) is to be read as including a reference to the fixtures that are from time to time attached to the premises and so become part of the site. Whilst fully recognising that, I nevertheless find myself stopping short of the destination at which the judge finally arrived. My reason for that is because it seems to me that such destination involves the attribution by the parties to clause 2(6) of a sense that it cannot sensibly have been intended to bear. That is because if clause 2(6) is to be read as arguably *not* proscribing the removal of tenant's fixtures such as those installed upon and subsequent to the carrying out of the clause 1 construction works, that can only be because the phrase 'the said premises' in clause 2(6) is to be interpreted as confined, or arguably confined, to a reference merely to the original buildings and site in the state they were when the lease was granted.

37. For my part, I would regard any such interpretation of clause 2(6) as commercially unrealistic. Clause 2(6) was directed at imposing a negative obligation in relation to the making of alterations or changes to 'the said premises' save in connection with (originally) the steel making use and (as amended) any industrial purpose permitted from time to time. It appears to me obvious, as I consider it would also so appear to the reasonable man, that such negative obligation was not intended to be confined simply to what was proposed to be done to the original buildings and the site in their respective original states. A central commercial obligation under the lease was the imposition upon the tenant of the clause 1 covenant to build and equip a steel-making plant. That of course involved an alteration and change to 'the said premises' as they were at the grant of the lease, because whether or not it involved any alteration to the original buildings, it certainly involved an alteration to the site. I regard it as clear, however, that the sense of clause 2(6) must also have been to proscribe any alterations or changes to the building and plant erected in compliance with that covenant, save in so far as permitted by its proviso. To interpret 'the said premises' in clause 2(6) as not meaning this would in my view be to rob it of what I would regard as its primary intent. In short, I regard it as apparent that whatever sense may be attached to the use of the phrase 'the said premises' in other provisions of the lease, there can be no doubt that in clause 2(6) 'the said premises' is a reference to the buildings and site from time to time.

38. If this is the correct sense of 'the said premises' in clause 2(6), then in my view it must follow that it is a phrase that includes the new building and plant, including the fixtures, whether landlord's or tenant's, which form part of the demised premises. It follows that during the currency of the term, the tenant is precluded from removing any tenant's fixtures, save as permitted by the proviso to clause 2(6). I have earlier

noted the judge's point that this would mean that, as the end of the term approaches, the tenant could not start to remove any tenant's fixtures in preparation for his vacation of the premises at the end of the term. That may be so, but I do not regard it as a consideration requiring any different meaning to be attached to clause 2(6).

39. I would allow Peel's appeal, and would invite the parties to agree a form of variation to the judge's order of 15 July 2013.

Lord Justice McFarlane:

40. I agree.

Lord Justice Vos :

41. I agree with Rimer LJ, and would only add these few words because we are disagreeing with the judge.

42. I completely accept that, if there is to be a contractual inhibition on the tenant's legal right to remove tenant's fixtures, that inhibition must be clearly stated. But, as it seems to me, something that is determined on normal principles of construction to be the proper meaning of an unambiguous provision in a lease must be regarded as being clearly stated.

43. It would be remarkable if the court could conclude (a) that the proper meaning of the provisions of a lease was that tenant's fixtures could not be removed, but (b) that that meaning was not adequately clearly stated to permit it to be given effect. Such a conclusion would throw the entire process of contractual interpretation into doubt. The process is designed to achieve a single proper construction, not several possible answers.

44. Put another way, if the provision in question is ambiguous and has two or more equally possible meanings, the process of construction itself will take into account the policy of the law to the effect that tenants should generally be permitted to remove their trade fixtures in order to encourage commercial investment (see paragraph 13.142 of Woodfall). In such a case the provision in question would, other things being equal, be likely to be construed as not interfering with the tenant's right under the general law.

45. The question in this case is whether clause 2(6) did have any other possible meaning. For the reasons Rimer LJ has given, I do not think it did.

46. The relevant tenant's covenant can be best understood by reading the definition of "the said premises" into it. That is an entirely orthodox process. Read that way, the covenant was:-

> "[n]ot at any time during the said term to … make or suffer to be made any change … whatsoever in or to [the Site … Together with the Buildings erected thereon or on some part or parts thereof] save in connection with … [the permitted purpose of steel making etc.]".

47. Though the term “Buildings” is not defined, since the covenant is expressed to apply “at any time during the said term”, it must be construed as referring to both existing buildings and those built in accordance with clause 1. Further, it is trite law that whatever is attached to the land becomes part of the land (see paragraph 13.133 of Woodfall). Thus, the term “Buildings” can only be properly understood as including “fixtures”. The fact that “fixtures” are referred to expressly in other covenants, when they need not have been, cannot affect that as being the proper construction of clause 2(6).

48. For these reasons, the tenant in this case covenanted “[n]ot at any time during the said term to … make … any change … whatsoever … to [the Buildings including attached landlord’s and tenant’s fixtures] … save in connection with … [steel making etc.]”. There can be no doubt, in my judgment, that the tenant would be breaching its covenant by making a change to the Buildings so defined if it were to remove the tenant’s fixtures, except for the purpose of steel making etc. on the premises. The tenant’s purpose in removing these fixtures would be to sell them, not to use them for steel making on the premises, nor to replace them with more modern facilities for that purpose.

49. In these circumstances, I agree that the appeal must be allowed.