



## LEGAL BRIEFING

### *Savoie and Savoie Ltd v Spicers Ltd*

[2014] EWHC 4195 (TCC), Mr Justice Akenhead

#### *The Facts*

During January 2013 Spicers Ltd (“Spicers”) engaged the French company Savoie and Savoie Ltd (a related British company, together “Savoie”), to design, supply, supervise and commission a new conveyor system at a factory warehouse in the West Midlands. The automated conveyor system was required to fulfil orders for Spicers’ office products and comprised conveyors and other equipment for the packing of the products and the printing of labels. The conveyors were attached to the ground floor concrete slab by some 2,000 bolts but other substantial and/or important pieces of equipment were not physically attached to the floor.

Following completion of the installation towards the end of 2013, disputes arose between the parties over payments and the quality and performance of the installation.

Savoie issued a Notice of Adjudication in June 2014. Spicers objected to the jurisdiction of the adjudicator on the basis that the works were not “*construction operations*” within the meaning of Section 105 of the Housing Grants Construction and Regeneration Act, as amended (“HGCRA”). The adjudicator’s non-binding opinion was that he had jurisdiction and in a Decision dated 11 August 2014 he ordered Spicers to pay Savoie approximately £828,000 plus VAT, interest and his fees.

When Spicers failed to pay, Savoie commenced enforcement proceedings in September 2014. On 13 November 20 Mr Justice Akenhead refused the application for summary judgment on the basis that there were triable factual issues and because he felt that a site visit was necessary. The expedited trial took place on 3 December 2014.

#### *The Issues*

1. Was the conveyor system sufficiently attached to the floors so as to give rise to a proper conclusion that it was “*forming, or to form, part of the land*” for the purposes of Section 105 of the HGCRA?
2. Was Section 105(1) engaged in that the installation of the conveyor system represented “*construction operations*”?

#### *The Decision*

In his judgement Mr Justice Akenhead considered Section 105 and the definition of construction operations, highlighting that Section 105(1)(b) includes the provision of industrial plant within the definition. In addition, he noted that Section 105 mentions “*forming, or to form, part of the land*” as a facet of the definition. He formed the view that whilst the law relating to fixtures in the context of the law of real property casts useful light on whether the item of work forms part of the land, it is not a pre-condition for the purposes of Section 105:

*“... Whether something forms part of the land is a question of fact and this involves fact and degree... [it] is informed by but not circumscribed by principles to be found in the law of real property and fixtures...”*

Furthermore, in relation to the object or installation forming part of the land, the Judge said one should have regard to the purpose of the object or installation in question. Simply because something is installed in a building or structure does not necessarily mean that it

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is automatically a fixture or part of the land.

The Judge held that the conveyor system did form part of the land for the purposes of Section 105:

- "a) There were extensive and substantial fixings (by bolts) of the system to the body of the building... There were large numbers (in the thousands) of bolts drilled into the floors...;*
- b) The conveyor system is very substantial and large. It covers a large section of the ground floor and a significant part of the mezzanine floor...;*
- c) The conveyor system was clearly intended, both subjectively and objectively, to be relatively permanent and to perform a key role in the warehouse...;*
- ...*
- e) The fact that some of the elements comprising the system ... were not as such mechanically attached to the floor does not undermine the conclusion...*
- f) The fact that parts of the system are relatively easily removable does not itself weigh particularly heavily against the conclusion which I have reached..."*

The Judge found that it follows from the above that Section 105(1) of the HGCRA was engaged and that the installation of the conveyor system did represent "construction operations". Thus the Adjudicator did have jurisdiction to decide the dispute and his Decision was enforced.

#### **Commentary**

The Judge was referred to several 19th and 20th century property law cases concerning whether or not chattels became in law part of the land once fixed to it. Whilst each case must be determined on its own facts the Judge noted that the fixing with screws and bolts of an object to or within a building or structure is a strong pointer to the object becoming a fixture and part of the land but it is not absolutely determinative. This judgment provides some guidance on the definition of "construction operations" and the meaning of "forming, or to form, part of the land" for the purposes of Section 105 of the HGCRA but it should be noted that the decision is specific to the facts of the case and the construction and purpose of the conveyor system in question.

Stacy Sinclair  
January 2015

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