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Legal alert

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Ownership of Banksy mural

The Creative Foundation v Dreamland Leisure Ltd and others [2015] EWHC 2556 (Ch)

This is an interesting and unusual case. The tenant had a lease of a building that it used as an amusement arcade.

An anonymous street artist spray-painted a mural onto one of the walls of the building. The mural was considered to be by Banksy and therefore very valuable.

The tenant removed the section of the wall containing the mural, made good the damage to the building and shipped the mural to New York to be sold at auction, hoping to pocket the proceeds

The landlord assigned any rights that it had to the mural to a charitable art foundation. The foundation then brought a claim against the tenant for its return.

The tenant argued that it was acting in accordance with its repairing obligations by removing the artwork. Once removed, the tenant claimed that the artwork became its property by virtue of an implied term in the lease.

The court disagreed. It held that, once sprayed on to the wall, the artwork became part of the land and therefore belonged to the landlord.

Although the mural probably amounted to an item of disrepair, the removal by the tenant of the relevant section of the wall was not a reasonable way of complying with the covenant to repair. (More reasonably, the mural could have been painted over or removed by chemical cleaning.) The removal of the section of the wall was therefore a breach by the tenant of the prohibition on alterations.

Once removed, the artwork became a chattel belonging to the landlord. Although it might be implied that a tenant had a right to dispose of chattels removed whilst carrying out repairs, that is not the same as an implied term that ownership in such items transferred to the tenant.

With hindsight, the tenant's legal argument was bound to fail. Maybe a better tactic would have been for the tenant to threaten to paint over the Banksy (in exercise of its repairing obligation) unless the landlord agreed to share the profit!

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