Taxation—Landlord and Tenant—Right to Hold the Land for Unpaid Taxes on Removable Buildings

Plaintiff leased his unimproved land to a tenant who had an option to renew and the right to remove any buildings or other improvements which he might erect thereon during either or both terms. From 1929 to 1939 the lands were assessed against plaintiff and the buildings plus other improvements and personal property against the tenant. Plaintiff paid the tax on the land each year. In 1930 the buildings and land were sold for the unpaid taxes on the buildings and personal property. *Held,* the land could be charged with the unpaid taxes on the buildings and improvements but not with the unpaid personalty taxes. *Becker v. Mayor and Council of Little Ferry,* 125 N.J.L. 141, 14 Atl. 2d 493 (S. Ct. 1940).

By including in his lease a clause to the effect that at the end of the lease he can remove any buildings that he might erect, a tenant can retain title to them.[1] The New Jersey courts have often stated, "Taxes are in legal contemplation neither debts nor contractual obligations, but are in the strictest sense of the word exactions. Where the legislature has prescribed a special method respecting such divestments and their devolution, such must be pursued to the exclusion of others based upon general legal rules.[2] It is undoubtedly the settled law in this state that taxes or assessments do not become liens upon property except by virtue of express legislation, and are collectible only in the manner provided by statute."[3] Thus it would seem that there is some question as to whether the land should be held for taxes on buildings or other improvements where there is a reservation by the tenant of the right to remove them. To do so would seemingly be to hold the landlord for taxes on property which he does not own. There are authorities who have taken this view. In an early case the Connecticut court stated that buildings erected on the land by a lessee who has the right to remove them at the expiration of the lease, are property

1. Boyle v. Johnson, 80 N.J.Eq 293, 84 A. 204 (Ch. 1912); Conover v. Smith, 17 N.J.Eq. 51 (Ch. 1864); Parker v. Redfield, 10 Conn. 490 (1835).

2. Board of Chosen Freeholders v. Inhabitants of Weymouth, 68 N.J.L. 652, 54 A. 458 (E. & A. 1902).

3. Cranbury T. P. v. Chamberlin, etc., 6 N.J.Misc. 39, 139 A. 800 (S. Ct. 1928).

of the lessee and taxable as such.[4] It must be added, however, that in this case the tenant was originally taxed and this was the suit to collect from him. In a case where a bank rented lands with the right to remove buildings reserved, the New York court which heard the case stated that the building was real estate which belonged to the bank and that it was taxable to the bank.[5] The Missouri courts have held that buildings which are removable by the lessee must be taxed against him.[6] In a case directly on point the Tennessee court held that the lessee must be taxed and that a decree enjoining the taxation of the lessor was proper.[7]

There is also authority for the proposition that the land can be held for the unpaid taxes on the buildings in spite of the fact that they can be removed by the tenant. A Connecticut court stated that private agreements between the parties as to the right to remove buildings are not binding on the town or the assessors.[8] In that case the cottages were taxed to the landlord in spite of the fact that the tenant had the right to remove them. In Minnesota a landlord paid the taxes on the buildings and sought to recover them from the tenant and the court said that he could, but went on to say that in spite of the fact that the tenant was ultimately liable where he retains the right to remove, the land can be held until the taxes are paid by one of the parties.[9] A Pennsylvania court has stated it thus: "There is no suggestion that the taxation of houses, mills and factories is made to depend upon the kind or character of the estate the owner may have in the land upon which the buildings are located. The taxing statutes look to the nature of the structure, whether it be permanent or not, rather than to the technical legal distinctions as to what constitutes real estate. If it had been otherwise intended it would not have been necessary to designate the different kinds of improvements which should be subject to taxation as

4 Parker v. Redfield, *supra*, note 1.

5 The People *ex rel.* Van Nest v. The Commissioner of Taxes, 80 N.Y. 573 (1880).

6. State *ex rel.* Zeigenheim v. Mission Free School, 162 Mo 332, 62 S.W. 998 (1901).

7. East Tennessee Ry. Co. v. Mayor etc. of Morristown, 35 S W 771, 37 L R.A. (N.S.) 1166 note (Tenn. 1895).

8. James Comstock v. Town of Waterford, 85 Conn. 6, 81 A. 1059 (1911).

9 Carrie La Paul v. Frank Heywood, 113 Minn. 376, 129 N.W 763 (1911)

real estate."[10] Our statutes read as follows: "All property real and personal, within the jurisdiction of this state . . . shall be subject to taxation annually.[11] All unpaid taxés on lands, with interest, penalties, and costs of collection shall be a lien on the land on which they are assessed on and after December firs t of the year in which they fall due."[12] Land is defined in the act as including land and buildings.[13] As can easily be seen there is nothing in the statutes which seems to indicate that the legislature intended to make a distinction where there was an agreement between parties to keep buildings from becoming part of the real estate. On the contrary, from the wording of the statute and the definition of the word land, it would seem that the legislature intended that all lands be subject to a lien for unpaid taxes upon buildings thereon regardless of what agreements the parties might make.

From a practical aspect, this latter view seems to us the more desirable. In practice most leases contain provisions reserving the right to remove buildings erected by the tenant. Such provisions are inserted for any one of a number of reasons, but they are seldom there for what would seem at first glance to be the most important reason, i.e., to give the tenant the right to actually remove them. There are very few buildings which could be removed from the land. In most cases if they were to be removed, they would have to be torn down and as piles of used bricks they would be liabilities rather than assets. If a lien could not be impressed upon the land for the unpaid building taxes, there would, therefore, be no effective way to enforce the payment of the taxes. The city would have nothing of value to sell to recover the taxes. A Missouri court brought out another difficulty from a practical aspect. Frequently a tenant loses his right to remove. The determination of whether he has lost the right often requires long and involved proceedings between the parties and it would be extremely difficult if not impossible in many cases for the assessor to determine whether or not there was still a diversity of ownership[14] It certainly

10. Pennsylvania Stave Company's Appeal, 236 Pa. 97, 84 A. 761 (1912)
11. N.J.R.S. 1937, 54:4-1; N J.S A. 54.4-1.
12. N.J.R.S. 1937, 54:5-6; N.J.S.A. 54 5-6
13. N.J.R.S. 1937, 54:5-2; N.J.S A. 54 5-2.
14. Perrin v. Excursion Co. 118 Mo App. 44, 93 S W. 337 (1906).

cannot be contended that the city should be denied the right to collect its taxes because of such facts. For these reasons it is felt that the court has reached the most desirable conclusion.