

In support of its Motion, Plaintiff attached and submitted at the hearing a copy of an inventory prepared on March 1, 2013 by C&M Builders (the "Inventory"). The Inventory describes the Property improvements, along with the contents of each, as Buildings "A"- "Q":

- A 30'x100' Building
- B 30'x100' Restroom Building
- C 40.5'x60.5' (former) Cold Storage Building
- D 30'x100' Kitchen Building and Contents
- E 30'x100' Storage Building and Contents
- F 30'x100' Storage Building and Contents
- G 30'x100' Storage Building and Contents
- H 40.5'x80.5' Maintenance Shed and Contents
- I Mobile Home Dressing Rooms 4, 5 and 6
- J Mobile Home Dressing Rooms 7, 8 and 9
- K Mobile Home Dressing Rooms 1, 2 and 3
- L Mobile Home Production Office
- M Electrical Power Building
- N Electrical Power Building 2
- O Ticket Box Building
- P Stage, Towers, Barriers and Seating
- Q Kohler 300 Diesel Generator

In addition, certain other items asserted to be fixtures include, but are not necessarily limited to:

AZ
AD

- R Electric Pylon Sign
- S Bleachers
- T Walk-in Coolers and Freezers
- U Race Track Tower
- V Kitchen Hoods, Fryers, Grills, Flat-top Stoves
- W Building Cabinetry

Under South Carolina law, criteria for determining whether personalty becomes a fixture when affixed to realty include: (1) the mode of attachment; (2) the character of the structure of the article; (3) the intent of parties making the annexation; and (4) the relationship of the parties.

City of North Charleston v. Claxton, 315 S.C. 56, 62-63, 431 S.E.2d 610, 614 (Ct. App. 1993).

Although generally viewed as personal property, a mobile home may be a fixture. See, e.g., In re

Rebel Manufacturing and Marketing Corp., 54 B.R. 674 (Bankr. D.S.C. 1985). The property designation adopted by a governmental unit, such as a county, is not controlling. Id. at 676. The law presumes that an improvement placed on the premises by or as owner of the underlying property is generally considered to be doing so for the betterment of the real estate. Hyman v Wellman Enterprises, Inc., 337 SC 80, 85, 522 SE2d 150, 152 (Ct. App. 1999) (citing Planters' Bank v. Lummus Cotton Gin Co., 132 S.C. 16, 23, 128 S.E. 876, 878 (1925)).

At the hearing, Plaintiff introduced evidence that all the improvements listed above were in place at the time Wachovia Bank made its loan to the mortgagor.¹ Portions of a 2007 appraisal prepared for Wachovia Bank revealed the presence of each of the "Buildings" at that time. Buildings A-H and M-O are clearly attached as permanent structures to the real property. Buildings I-L, originally mobile homes, were also present on the real property at the time the loans were made and, as can be seen by reference to the pictures attached to the Motion in the Inventory, have been attached to the real property by means of skirting and attached decks and porches. Moreover, evidence presented at the hearing from the SC Department of Motor Vehicles reveals that title for these former mobile homes has not been issued by that governmental agency. The diesel generator, identified as Building Q is affixed to a concrete slab, which, in turn, is attached to the real property.

The stage, towers, seating and concrete barriers also appear to be affixed to the real property and are of such a size and magnitude that it is difficult to imagine the feasibility of their removal from the real property. As such, the mode of attachment and character of the structure attached supports the assertion that these items constitute fixtures.

At the hearing, Mr. Guarco submitted an affidavit in opposition ("Affidavit"). As to the issue of the parties' intent, the Affidavit provides, among other things, that Mr. Guarco, has been paying property taxes on the four mobile home units and that the bleachers, golf cart, 70' freezer, kitchen hood, fryers, grill, flattop stove, concrete barriers and race-track tower were placed on the real property subsequent to the Plaintiff's mortgages. Mr. Guarco also avers that the stage, mobile homes, concert seating, generator and electric sign were not included in his "agreement" with the Plaintiff.

With respect to the payment of personal property taxes on the mobile homes, a county's characterization of property as personal or real is not determinative. Rebel Manufacturing and Marketing, 54 B.R. at 676. Therefore, Mr. Guarco's payment of property taxes on the mobile homes does not alter the court's conclusion that they are fixtures attached to the real property. Similarly, adding or affixing improvements to the real property subsequent to the date of the subject mortgages does not exclude their incorporation within the real property subject to the mortgages. Indeed, the mortgages provide that they encumber, inter alia, "(ii) all buildings or improvements now or hereafter erected on the Land; (iii) all fixtures attached to the Land or any buildings or improvements situated thereon." Moreover, the law presumes that that an improvement placed on the premises by or as owner of the underlying property is generally considered to be doing so for the betterment of the real estate and therefore a fixture to the real estate. Hyman, 337 SC at 85. Finally, the statements made by Mr. Guarco in his Affidavit concerning the personal property nature of many of the improvements are not consistent with the personal property schedule filed by mortgagor Marion Amphitheatre, LLC, of which Mr. Guarco is a principal, in the mortgagor's previous chapter 11 bankruptcy filing.

¹The Plaintiff is successor by merger with Wachovia Bank, National Association

In addition to Buildings A-Q as described in the Inventory and other items listed above, it is apparent that improvements such as the cabinetry, ice machines, ranges, walk-in coolers and freezers, and vent hood constitute fixtures encompassed by the mortgages.

The Inventory also identifies a number of building contents that cannot be reasonably viewed as "fixtures", i.e. a sandwich warmer, fountain machines, coffee and tea machines, a sandwich refrigerator, bread warmer, food warmer, pizza dough boxes, Pepsi coolers, Subway baking bread oven, prep tables, lawn chairs, unattached picnic tables, cloth beach chairs, golf cart, Gator vehicle, drink troughs, dressing room tables, chairs, beds and couches.

Upon consideration of the Motion, the subject Mortgages and the argument of counsel, the Court finds:

AS
HD
The improvements described herein as items A-V constitute "fixtures" under South Carolina law for the purpose of being included within the property interests conveyed through the foreclosure herein.

NOW THEREFORE, it is ORDERED that the Motion is GRANTED and that the improvements described herein as Items A-V constitute "fixtures" under South Carolina law for the purpose of being included within the property interests conveyed through the foreclosure herein.

AND IT IS FURTHER ORDERED that any residual items or items identified as not constituting fixtures remaining on the Property for which any party to this action has not removed, or made arrangements with Plaintiff to remove, within thirty (30) days of the date of this Order shall be deemed abandoned.

AND IT IS SO ORDERED.

Haigh Porter

Honorable Haigh Porter
Special Referee

FLORENCE, SC
MAY 31, 2013

46

STATE OF SOUTH CAROLINA
COUNTY OF MARION
WELLS FARGO BANK, N.A.,
successor-in-interest to WACHOVIA
BANK, NATIONAL ASSOCIATION,

Plaintiff,

vs.

MARION AMPHITHEATRE, LLC,
DAVID P. GANNON, MICHAEL
GUARCO, CAROLINA
ENTERTAINMENT COMPLEX, LLC
AND 4 PROPHETS, LLC a/k/a
4 PROFITS, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO. 11-CP-33-00016

) CERTIFICATE OF MAILING

MARION COUNTY SC
SHERY R. RHODES
CLERK OF COURT

2013 JUN -6 P 3:13

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FILED

The undersigned, Paralegal to Attorney David B. Wheeler of Moore & Van Allen PLLC, Attorneys for Plaintiff, hereby certifies that on the 5th day of June, 2013, she caused a copy of the Order Granting Motion to Confirm Fixtures Conveyed Through Foreclosure in an envelope with first-class postage, to:

DAVID P. GANNON
125 Estey Avenue
Hyannis, Massachusetts 02601

CAROLINA ENTERTAINMENT COMPLEX, LLC
c/o Henry Zukoswki, its Registered Agent:
1548 Hwy 501 South
Marion, SC 29571

RECEIVED

JUL 08 2013

SC Court of Appeals

CHARLESTON448384v5

A CERTIFIED COPY OF THE
ORIGINAL FILED IN THIS OFFICE

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Sheri R. Rhodes

CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

C/A #2011-CP-33-16

John P. Williams, Jr., Esquire

PO Box 883

Marion, SC 29571

ATTORNEY FOR DEFENDANT, 4 PROPHETS, LLC a/k/a 4 PROFITS, LLC

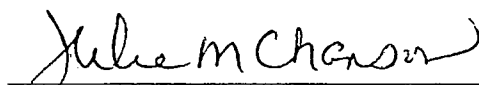
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