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Case No: HT-14-311

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 15th December 2014

Before

MR JUSTICE AKENHEAD

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Between:

SAVOYE and SAVOYE LIMITED **Clai**

- and -

SPICERS LIMITED **Defe**

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Anneliese Day QC (instructed by **Reed Smith LLP**) for the **Claimant**

Jonathan Acton Davis QC (instructed by **Olswang LLP**) for the **Defendant**

Hearing date: 3 December 2014

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JUDGMENT

Mr Justice Akenhead:

1.
The Claimants, Savoye (a French company) and Savoye Ltd (a related British company) (together "Savoye") seek to enforce an adjudicator's decision in its favour against Spicers Ltd ("Spicers"). The only issue is whether the underlying contract between the parties was a construction contract involving "construction operations". This issue revolves around the application of the proper meaning of the term "construction operations" in Section 105 of the Housing Grants, Construction and Regeneration Act 1996 ("HGCRA") in the context of the facts and the contract between the parties.

Factual Background

2.
Spicers is, in a substantial way, in the business of distributing office supplies and equipment. It has a number of warehouses, including one at Smethwick, West Midlands. At Smethwick, its business is mainly storing a very large number and range of products which have come from wholesalers, manufacturers and importers for distribution to other wholesalers, albeit that some of the products are provided direct by Spicers to clients.

3.

By a written contract dated 3 January 2013 (“the Agreement”), Spicers engaged Savoye to design, supply, supervise and commission a new conveyor system at its existing factory site in Dartmouth Road, Smethwick, West Midlands. Spicers had invited Savoye amongst others to tender on 11 July 2012 and, by its Proposal (12-P-049 Rev 7), Savoye submitted its tender which was accepted. Clause 2.9 contained an express agreement "that the Equipment and Services to be provided by [Savoye] hereunder are exhaustively defined in the Agreement and Proposal, the provision of any other item necessary for the performance of the Agreement being under Spicers’ responsibility". Clause 2.1 required Savoye to "supply the Equipment and the Services in accordance with the Agreement". The Contract Price was identified in Clause 5.1 (a) as £2,370,801. It is, rightly, common ground that Savoye was required to install the Equipment, Clause 6.5 identifying that when "the Equipment has been delivered and installed in accordance with the Agreement, and has passed all required inspection and testing, it will be accepted by Spicers”. There were provisions requiring Savoye to rectify defects in or damage to the Equipment and Services. Clause 21 provided for dispute resolution with senior management first to discuss the matter to resolve disputes, Clause 21.2 then providing as follows:

“In the event that no settlement is reached under clause 21.1 and if the Agreement is a "construction contract" as defined in Section 104 of the [HGCRA] either party may refer any dispute or difference arising in relation to any matter under the Contract for adjudication, in which case the adjudication provisions of the TeCSA Adjudication Rules…shall apply...”

Otherwise, the Agreement was by Clause 22.1 "subject to the non-exclusive jurisdiction of the English courts".

4.
The tender Proposal, incorporated into the Agreement, was a 50 page document which contained layouts both of the ground floor and a smaller mezzanine floor at the factory. It is clear that the mutual anticipation was that the Equipment to be installed would cover a very substantial part of both floors. What was intended to be provided was "an automated conveyor system for the order fulfilment of office products" (Page 3/50 of the Proposal). The same page identified that as part of a programme of improvements to its operations network:

“Spicers is developing its site at Smethwick in two ways:

Firstly through increasing the storage capacity of the site by building a warehouse extension at the back of the existing building.

Secondly, by increasing the speed and throughput capability of the site’s conveyor systems through modernisation & replacement. This development is essential to facilitate the Smethwick site taking on additional activity."

5.
The extension to be attached to the existing warehouse was to be built by others before Savoye started its installation and the installation to be provided by Savoye was in the existing warehouse building. To some extent, existing shelving remained to be used by Spicers. Once the new extension was built, much of the product that was in the existing building was to be taken out and stored in new high racking in the new extension.

6.

The existing warehouse into which Savoye was to put its installation was a large rectangular open space warehouse (albeit with some offices and reception areas); the open space was (judged by eye) approximately 125m by 175m and there was, broadly over the middle area, a substantial mezzanine floor. That mezzanine floor comprised steelwork with substantial chipboard floor decking and there was extensive racking on that floor. The ground floor was concrete. A reasonable description of the installation to be provided by Savoye is as follows:

(a) The conveyor system was to be automated and computer-controlled so that an order from a customer could be relayed into the system, creating initially a cardboard carton to be forwarded on to the conveyor system, marked with a specific bar code which would then be read at a number of points along the conveyor line, directing it to those parts of the conveyor system where the particular goods which were to go into the carton were located. Once the goods had been placed, manually by workers, into the carton, the carton would be automatically directed towards the end of the conveyor system where a lid would be put on it and labels attached, whence it would be directed out to loading bays and onto lorries.

(b) The conveyor system itself was, on the ground floor, to run in three very long loops; on each loop, one side is referred to as the "picking" side and the other the "replenishment" side. This is explicable because the workforce fulfilling the orders would be on the picking side, placing the required items into the passing cartons, having taken them from racks above the conveyor line; the overhead horizontal part of the racking passed over the conveyor line to the other side where the goods could be replenished by other workers on the replenishment aside. The three loops, although long and extensive, simply housed a wide variety of different items of merchandise.

(c) The three ground floor conveyor loops at one end were located about 1m from the ground but at the end adjacent to the new extension warehouse the metal framework on which they were located was raised up to 2m or possibly a little more as each loop came around from the picking side to the replenishment side.

(d) The conveyor system on the ground floor was also connected by conveyors which went up to the mezzanine floor through an aperture created for the purpose and it then ran virtually the full length of the mezzanine floor. At this level, the cartons could be loaded with, what I understood to be, more "high end" or valuable items. Once the carton had been loaded on that level, the conveyor system took it down to the ground floor.

(e) In addition to the actual conveyor lines, there were substantial and/or important other pieces of equipment. These were, principally:

(i) The PAC 600 and ID Pac which are large and small carton erectors, located at the beginning of the conveyor lines. They rest on the floor under their own weight. The PAC 600 belonged to Spicers but it had to be removed by Savoye and substantially refurbished before being returned to the site; it needed either one 5 ton or two 2.5 ton capacity machines to move it and, I assume therefore that its weight was approaching 5 tons. It was about 8m long, 2m wide and 3m high. The ID Pac was some 4-6m long, 2m wide and 2m high and, I infer, weighed about 3-4 tons. Both were connected to the overall system by compressed air, electrical power and IT connections.

(ii) The routing label printer and applicator was located near the start of the conveyor system and is connected by compressed air, electrical and data feed lines. It rests under its own weight, its structure being broadly in the form of a tripod, which was not bolted down to the floor.

(iii) There are two weight scales. They are part of the conveyor line, having conveyor rollers on them and weigh the empty and later fuller cartons as they pass towards and from the picking lanes. They are connected by electrical and data lines to the overall system. The weighing provides a cross check as to whether all or all the right items have been put into a given carton.

(iv) The “Jivaro” machines are located towards the end of the conveyor lines and places lids automatically onto the now filled cartons. These are not, as such, fixed to the ground, resting on the ground under their own weight, but they are connected with electrical, and data lines into the overall system. They are about 6 to 7m long, 2 m high and, at their widest, about 3m wide. They are likely to weigh several tons each and, as the evidence indicated, they could not readily be moved without a significant amount of dismantling first.

(v) There are logo printers in the line after the Jivaro machines which are connected by power and data lines into the overall system. They are not, as such, bolted to the floor, although they have to be located right beside the conveyor lines because, as their description suggests, they have a facility to print (with quick drying ink) onto the cartons.

(vi) Finally, there is a shipping label printer which prints and attaches despatching information on to the cartons. This is located in effect on the gantry which bridges the conveyor lines with a supporting gantry being bolted to the floor and there being power, electrical and data connections.

7.
There seems to be little doubt that the conveyor system which was to cover substantial areas of the floor was probably the key element in the installation, with the other pieces of equipment (principally listed above) being essential parts of the overall system.

8.
Savoye completed their installation towards the end of 2013 but, it is clear, there have been increasing disputes between the parties, from Savoye’s side in relation to sums of money said to be outstanding and, from Spicers’ standpoint, in relation to the quality and performance of the installation. Indeed, in relation to the latter it seems that the conveyor system has not been commercially used to any great extent if at all, although the area is still being used for the storage of goods by Spicers. A small part of the conveyor system has more recently been removed by Spicers to facilitate access to loading bays.

9.
Matters came to a head when Savoye gave notice of adjudication on 30 June 2014 under the adjudication clause in the Agreement with a solicitor, Mr Jonathan Hawkswell, being appointed as adjudicator, in relation to a dispute about payment. Spicers lodged an objection to the jurisdiction of the adjudicator on the basis that the works which Savoye was engaged to carry out were not "construction operations" within the meaning of Section 105 of the HGCRA. This was challenged by Savoye and the adjudicator, in a non-binding sense, accepted that he did have jurisdiction and proceeded, after receiving extensive representations and evidence to produce his decision. In the result, his decision, on 11 August 2014 was that Spicers was to pay to Savoye £827,780.35 plus VAT of £34,050.92, £11,041.01 as interest and adjudicator's fees of £16,440 (inclusive of VAT). Although issues had been raised as to the quality and performance of the conveyor system installed by Savoye, the adjudicator decided that, by operation of the payment provisions of the HGCRA’s Scheme, Savoye was entitled to be paid what it had invoiced because Spicers had not served the requisite notices such as would have permitted it to reduce or withhold payment.

10.
The decision having not been honoured by Spicers, Savoye issued the current proceedings are to enforce the adjudicator's decision.

The Proceedings

11.
Savoye's Claim was issued on 5 September 2014, together with its Particulars of Claim and was accompanied by a summary judgment application, supported by a witness statement from its solicitor. Directions were given on 9 September 2014 with the timetable laid down towards the hearing on 8 October 2014. Additional witness statements were provided by Mr Garate of Savoye, who had become involved in the project in about March 2014 and Mr Arnold, the Director of Operations of Spicers. In essence, Spicers advanced the argument that it had put forward in the adjudication to the effect that the adjudicator had no jurisdiction because the installation did not and could not amount to "construction operations" under the HGCRA; Spicers' substantive evidence at that stage was from Mr Arnold its Director of Operations. I heard Counsel on Wednesday, 8 October 2014 and, given the well presented arguments advanced on both sides, I reserved judgment. I had in fact commenced my judgment writing on 10 October 2014 when I was informed that an application was to be issued by Spicers to adduce further evidence. At the hearing, this possibility had not been hinted at.

12.
That application was issued on 13 October 2014 supported by an explanatory statement from Mr Worthington of Spicers' solicitors, with a substantive statement from Mr Michael, the CEO of Spicers, which in some detail suggested that most of the conveyor system was not fixed to the floor. I heard the application in early November and allowed it, giving Savoye the opportunity to file further evidence, which it did. On 13 November 2014, at the resumed hearing of the summary judgment application, I refused the application on the basis that there were triable factual issues and because I felt that a site view was necessary. Directions were given for an expedited trial. Further evidence was lodged and the site visit and trial took place on 3 December 2014, with 3 witnesses being called by Savoye (Messrs Garate, Girault (involved with installing the racking) and Moret (involved with installing the conveyor system)) and 2 by Spicers (Messrs Arnold and Michael). I reserved judgment.

The Law

13.
The HGCRA provides for adjudication in relation to construction contracts, defined by Section 104 as follows:

(1) In this Part a "construction contract" means an agreement with a person for any of the following—

(a) the carrying out of construction operations;

(b) arranging for the carrying out of construction operations by others, whether under sub-contract to him or otherwise;

(c) providing his own labour, or the labour of others, for the carrying out of construction operations."

14.
"Construction operations" are defined by Section 105:

(1) In this Part "construction operations" means, subject as follows, operations of any of the following descriptions—

(a) construction, alteration, repair, maintenance, extension, demolition or dismantling of buildings, or structures forming, or to form, part of the land (whether permanent or not);

(b) construction, alteration, repair, maintenance, extension, demolition or dismantling of any works forming, or to form, part of the land, including (without prejudice to the foregoing) walls, roadworks, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;

(c) installation in any building or structure of fittings forming part of the land, including (without prejudice to the foregoing) systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or security or communications systems…

(f) painting or decorating the internal or external surfaces of any building or structure.

(2) The following operations are not construction operations within the meaning of this Part—

…c) assembly, installation or demolition of plant or machinery, or erection or demolition of steelwork for the purposes of supporting or providing access to plant or machinery, on a site where the primary activity is—

(i) nuclear processing, power generation, or water or effluent treatment, or

(ii) the production, transmission, processing or bulk storage (other than warehousing) of chemicals, pharmaceuticals, oil, gas, steel or food and drink;

(d) manufacture or delivery to site of—

(i) building or engineering components or equipment,

(ii) materials, plant or machinery, or

(iii) components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or for security or communications systems,

except under a contract which also provides for their installation…”

15.
One can thus break down these definitions into what are (Section 105(1)) and are not (Section 105(2)) to be considered as "construction operations". Thus, it can be seen that construction and engineering works are generally covered by the definition but certain types (for instance nuclear processing, power generation and water or effluent treatment works) are excluded. The reasons for the exclusions from the ambit of the HGCRA are historical and, as appears from the Parliamentary debates on the Bill, the arguments of various interest groups persuaded Parliament that they should be excluded from its ambit. There is no particular logic in their exclusions other than that the industries in question were considered to be sufficiently important and (possibly) strategic to justify exclusion.

16.
The concentration in this case has been on Sections 105(1) (a) to (c), it being argued by Counsel for Spicers that machinery of the sort to be provided by Savoye was not covered by any of the expressions used there. I can start with the word "construction"; this obviously covers building but the word "construction", with its Latin origin in the verb “construere”, goes wider than building and, broadly, means "putting together"; “struere” means in Latin to build, prepare, place or arrange and with the

addition of the prefix “con” it involves a bringing together of different elements to create for instance a building. So far as the meaning of the word "building" as a noun is concerned, it clearly covers houses, offices, commercial premises, factories and warehouses, it being one of those words in respect of which it is fairly easy to say what is or is not a building; for instance, a tent is, not usually, a building, although a large tented structure such as the O² arena (formerly the Millennium Dome) would be classified as a building.

17.
The word “structure” also has as its Latin origin the verb “struere” and means something which has been placed, built, arranged or prepared; in common parlance, it has a connotation as having a function of supporting or servicing something else; thus, steelwork for a building is structural and a structure. A house or office building is a structure; Nelson’s Column is a structure. Things within a building may be a separate structure such as a mezzanine floor or steelwork to support heavy machinery. Lord Denning LJ as he then was, said in a rating case, **Cardiff Reading Authority and Cardiff Assessment Committee v Guest Keen Baldwin’s Iron and Steel Company Ltd** [1949] 1 KB 385, when considering whether heavy but movable tilting furnaces were in the nature of a structure, at Page 395-6:

“The tilting furnaces come within “furnaces" and the mains come within "flues” and "flumes and conduits" [as referred to in a statutory instrument]; but nevertheless, in order to be rateable each must be "a building or a structure" or "in the nature of a building structure". The learned recorder has held that they are not structures, or in the nature of structures, and [Counsel] says that his finding is a finding of fact with which an appellate court should not interfere…

In this case the learned recorder seems to have thought that these were not structures or in the nature of structures because they were movable. In my opinion, that was a misdirection. A structure is something which is constructed, but not everything which is constructed is a structure. A ship, for instance, is constructed, but it is not a structure. A structure is something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation; but it is still a structure even though some of the parts may be movable, as, instance, about a pivot. Thus, a windmill or a turntable is a structure. A thing which is not permanently in one place is not a structure, but it may be "in the nature of a structure” if it has a permanent site and has all the qualities of the structure, say that it is on occasion moved on or from its site. Thus, a floating pontoon, which is permanently in position as a landing stage beside a pier, is "in the nature of a structure," even though it moves up and down with the tide and is occasionally removed for repairs or cleaning. It has, in substance, all the qualities of a landing stage built on piles so, also a transporter gantry is "in the nature of a structure," even though it is moved along its site. It has the same qualities as a fixed gantry, save that it moves on its site."

18.
Jenkins J as he then was said in the same case:

“It would be undesirable to attempt, and indeed, I think impossible to achieve, any exhaustive definition of what is meant by the word "is or is in the nature of a building or structure". They do, however, indicate certain main characteristics. The general range of things in view consists of things built or constructed. I think, in addition to coming within this general range, the things in question must, in relation to the hereditament, answer the description of buildings or structures, or, at all events, be in the nature of buildings or structures. That suggests built or constructed things of substantial size: I think of such size that they either have been in fact, or would normally be, built or

constructed on the hereditament as opposed to being brought onto the hereditament ready-made. It further suggests some degree of permanence in relation to hereditament, i.e., things which once installed on the hereditament would normally remain in situ and only be removed by a process amounting to pulling down or taking to pieces. I do not, however, mean to suggest that size is necessarily a conclusive test in all cases, or that a thing is necessarily removed from the category of buildings or structures or things in the nature of buildings or structures, because by some feat of engineering or navigation it is brought to the hereditament in one piece…"

19.
Whilst this case related to whether particular equipment fell to be considered for rating purposes, it does provide some assistance as to what the meaning of the word "structure" means. Like Jenkins J, I do not consider that it would be possible let alone helpful to produce some supposedly exhaustive definition of what the word "structure" means because in almost every case, and this one is no exception, it should be possible to determine with relative ease whether a particular installation within a factory or warehouse is a "structure". The fact however that the equipment, said to be a "structure", can move or has moving parts does not mean that the equipment, as installed, can not be considered to be a structure. Equipment can be a structure although, of course, not all equipment is a structure.

20.
Sections 105(a) to (c) each mention "forming part of the land" as a facet of the construction operations being defined, although Sections 105(a) and (b) talk about "forming, or to form, part of the land" which presumably recognises a stage in the works in question before they actually form part of the land and a mutual intention that they will form part of the land. Mr. Justice Dyson, as he then was, said in **Nottingham Community Housing Association Ltd v Power Minster Ltd** [2000] BLR 309:

"In my judgment, still leaving (c) on one side, there is no warrant in paragraph (a) for distinguishing between different types of operations carried out in relation to a building or structure. Take the construction of the building. Paragraph (a) applies as much to the installation of a demountable wall partition as it does to the installation of a central heating, air conditioning, sanitation system or any other of the fittings mentioned in paragraph (c). There is no distinction in property law: once installed, they all become part of the land. Nor is there any other basis, whether technical or founded on the ordinary use of words, for saying that the installation of a demountable wall partition is, but the installation of heating systems etc is not, part of the construction of a 'building'. Such systems are often complex; they are usually integrated into the structure of the building; they may be very difficult to disconnect and remove from the building. It may be far easier to remove and replace, say, a demountable wall partition or cladding panels that have been fixed to the exterior of the building, than to remove one of the systems described in paragraph (c). The same applies to the other operations mentioned in paragraph 9(a)…"

21.
It is clear from Section 105(1)(b) that works can include the provision of industrial plant. It is a corollary of Section 105(2) that the installation of plant and machinery can be considered to be construction operations, provided that they are not simply being manufactured or delivered to site and that there is a contract for their installation. Put another way, it is not simply the concrete or brick foundations, the walls and/or steel or other columns and the roof which are to be considered as construction operations; it is also the case that much of what is to go into a building or structure is to be considered as being within the definition of construction operations. The unifying factor is the need for the items of work, materials, plant, equipment and the like to form part of the land.

22.
It is and remains, rightly in my judgment, common ground between Counsel that the question of whether an item, element of work or equipment "forms part of" the land in question is not only a matter of fact and degree but it is also determinable at least in the general context of the numerous authorities about fixtures arising under land or real property law. An adjudication case which considered what the expression "forming part of the land" meant was **Gibson Lea Retail Interiors Ltd v Makro Service Wholesalers Ltd** [2001] BLR 407 where the contract in question related to shop-fitting work. The evidence before the court was that much of the equipment such as gondolas and book and food display units, albeit in some respects screwed or bolted to walls or floor, did not form part of the land as the central and important characteristic was that it was movable equipment which could be moved "as goods come and go and the seasons change". The Judge, HHJ Seymour QC, was referred to several authorities on fixtures, for instance **Horwich v Symond** [1915] 84 LJKB 1083, where Buckley LJ said at page 1087:

“The question whether these articles were so fixed that they ought to be treated as annexed to the freehold, or were merely chattels, is, as I have said, a dual question of fact. The mere fact of some annexation to the freehold is not enough to convert a chattel into realty. That is shown by the case of carpets, which are certainly not fixtures; and the same principle seems to apply to a shop counter which stands on the floor not as a fixture, but as a chattel with a certain amount of fixing to keep it steady."

23.
HHJ Seymour QC went on at Paragraph 20 in his judgment:

“…Nonetheless it does appear that the intention of Parliament was to introduce into the Act by means of the words "forming part of the land" the existing law as to fixtures. There is no other "general rule of law" dealing with the effect of attaching chattels to real property…”

He went on at Paragraph 22 to consider the impact in Section 105(1)(a) of the HGCRA:

“I am satisfied that the proper construction of section 105(1)(a) of the Act is that the words "construction…of…structures forming, or to form, part of the land (whether permanent or not)" is clear and not ambiguous. Although [Counsel] submitted that the words "whether permanent or not)" indicated that the formation of part of the land need not be permanent, so that temporary attachment was sufficient, in my judgment [the other Counsel] was correct in his submission that the word "permanent", being an adjective, not an adverb, must qualify a noun and so could not qualify the temporal connotations of "forming, or to form, part of the land". It seems to me that it is the structures which need not be permanent. I have already indicated my view that the effect of referring to "forming, or to form, part of the land" is to import into section 105(1)(a) of the Act the concepts and tests of the law relating to fixtures. I cannot see to what else it could refer…In my judgment it is clear that the words in section 105(3) of the Act "fittings forming part of the land" [are] a reference to fixtures."

24.
I am not as certain as HHJ Seymour QC was that the law relating to fixtures was incorporated lock, stock and barrel by the reference to the words “forming part of the land”. It seems to me much more likely that Parliament was simply setting a factual test as to whether the building, structure, works and fittings were forming or to form part of the land. I have formed the view therefore that, whilst the law relating to fixtures casts useful light on the test, it is not some sort of pre-condition that the test or threshold of “forming part of the land” can only be “passed” if the item of work etc is a fixture as

understood in the law of real property. This is because it is not necessary to read the words used as requiring that, the word “fixture” is not used and there are some hints in the wording that the full fixture test is not required, not least of which are the words in Section 105(1)(a) that buildings and structures need not be “permanent”, in Section 105(1)(b) the words “industrial plant” (not apparently limited only to large plant) and in Section 105(2)(d) the words “building or engineering components or equipment, …materials, plant or machinery” (again without limitation). As will be seen by the following cases dealing with fixtures, the law relating to “fixtures” is not particularly simple and, if Parliament had intended to incorporate the law relating to fixtures, it could and would have done so rather than use some sort of verbal code form which some but not all might infer that the law relating to fixtures was to be applied.

25.
In this view, I am fortified by what Lord Lucas said in the parliamentary debate on the HGCRA at bill stage:

“…As to the meaning of the phrase “fittings forming part of the land”, the general rule of law is that whatever becomes attached to the land becomes part of it. An object which was attached to the land or which was attached to something which was itself attached to the land would be covered by the provisions. It does not matter whether it is easy to remove, such as something merely screwed to the wall, or whether the attachment is more substantial. Examples of fittings “forming part of the land” would include a fireplace, panelling, a conservatory on a brick foundation or radiators bracketed to a wall. The dividing line between things which are fixed and not fixed might be the telephone on one’s desk which is not fixed to the land and the socket in the wall which is. That is the sort of dividing line I would think of, but of course it is something that would be determined in each individual case” (see Hansard for 22 April 1996 at Page 18 where he answered queries about the meaning of the phrase “fittings forming part of the land”)

I hasten to say that I do not consider that the meaning of the words is ambiguous such as to engage the application of **Pepper v Hart** [1993] AC 593.

26.
I address now some of the cases which relate to fixtures and the ownership of buildings and the like. As a number of them indicate, the objective purpose or intention (judged objectively) of those involved in placing or attaching items of work or equipment on to or in to land or structure can be relevant. **Halsbury’s Laws of England** (2012), by reference to various authorities, says as follows at Para. 174:

“Whether an object that has been brought onto the land has become affixed to the premises and so has become a fixture (or a permanent part of the land) is a question of fact which principally depends first on the mode and extent of the annexation, and especially on whether the object can easily be removed without injury to itself or to the premises; and secondly on the purpose of the annexation, that is to say, whether it was for the permanent and substantial improvement of the premises or merely a temporary purpose for the more complete enjoyment and use of the object as a chattel. The mode of annexation is, therefore, only one of the circumstances to be considered, and it may not be the most important consideration.

An object which is attached to the premises only by its own weight will not in general be regarded as a fixture (or part and parcel of the land), unless circumstances showed that it was intended to become part of the premises, and the onus of proving that there was such an intention rests on the party asserting that the object has become a fixture or part of the land. If, however, an object is to some

extent attached to the premises, it will be considered to be a fixture or part of the land unless the circumstances show that it was intended all along to remain a chattel, and in such a case the onus of proof is on the party asserting that it is still a chattel. Framed paintings displayed on a room's walls do not usually constitute fixtures or fittings; they usually remain chattels."

27.
In **Holland v Hodgson** [1872] LR CP 328, the owner of a mill mortgaged it to the plaintiff and on his bankrupt assigned all his property to the defendant as trustee for the benefit of his creditors. The Defendants seized looms which had been attached to the stone floors of rooms in the mill by means of nails driven through holes in the feet of the looms and in some cases into beams built into the stone of the building and in other cases into plugs of wood driven into holes drilled in the stone for the purpose. This was necessary to steady the looms and keep them pointing in the right direction; the looms could not be removed without drawing the nails albeit that that could be done easily and without serious damage to the flooring. It was held that they were to be treated as part of the building. Blackburn J delivered the judgment of the appellate court, affirming the lower court's findings and referring to various authorities, saying at page 339:

"Walmsley v Milne…was decided in 1859. This case and that of Wiltshear v Cotterill…seem authorities for this principle, that where an article is a fixed by the owner of the fee [simple], though only affixed by bolts and screws, it is to be considered as part of the land, at all events where the object of setting up the articles is to enhance the value of the premises to which it is annexed for the purposes to which those premises are applied. The threshing machine in Wiltshear v Cotterill was affixed by the owner of the fee to the barn as an adjunct to the barn, and to improve its usefulness as a barn, in much the same sense as the hay-cutter in Walmsley v Milne was affixed to the stable as an adjunct to it, and to improve its usefulness as a stable…"

28.
Hobson v Gorringe [1897] 1 Ch 182 is a case which has been followed and approved in later decisions. It related to a gas engine let out on a hire purchase arrangement which provided that it should not become the property of the hirer until the payment of all the instalments and that it should be removable by the owner if there was a failure to pay hire instalments. The engine was fixed to the land by bolts and screws to prevent it from rocking and it was used for the purposes of the hirer's sawmill trade. Meanwhile, the owner mortgaged his land without the mortgagee having notice of the hire purchase arrangements. The hirer defaulted and the engine was claimed back by the owner and also by the mortgagee. AL Smith LJ, giving the judgment of the court, referred to previous cases such as **Wiltshear v Cottrell** (1853) 1 E&B 674 (threshing machine fixed by bolts and screws to those which were let into the ground), **Mather v Frazer** (1856) 2 K&J 536 (machinery fixed to the land by screws, solder or other permanent means), **Climie v Wood** (1868) LR 4 Ex 328 (engine screwed down to planks upon the ground and a boiler being fixed into the brickwork) and **Longbottom v Berry** (1869) LR 5 QB 123 (machinery annexed to the floor of a building in a quasi-permanent manner by means of bolts and screws) where these items of equipment formed part of the land or passed with the land. He held that the gas engine had become a fixture and that the terms of the contract between the owner and the hirer did not prevent that (see page 192). In relation to intention, he referred with approval to **Holland v Hodgson** saying that:

"…Lord Backburn, when dealing with the "circumstances to shew intention," was contemplating and referring to circumstances which showed the degree of annexation and the object of such annexation which were paid and for all to see, and not to the circumstances of a chance agreement that might or might not exist between an owner of a chattel and a hirer thereof. This is made clear by the examples

that Lord Blackburn alludes to to shew his meaning. He takes as instances (a) blocks of stone placed in position as a dry stone wall or stacked in a builder's yard; (b) a ship’s anchor affixed to the soil, whether to hold a ship riding thereto or to hold a suspension bridge. In each of these instances it will be seen that the circumstances to show intention are the degree and object of the annexation which is in itself apparent, and thus manifest the intention" (page 193)

29.
In **Crossley Brothers Ltd v Lee** [1908] 1 KB 86, the issue revolved around whether a gas engine fixed to the floor of the basement by bolts and screws was a fixture. The Divisional Court decided that it had become a fixture. Walton J referred to the case of **Hobson v Gorringe** saying at page 93:

“The facts that were very similar to those of Hellawell v Eastwood…and it was contended that the machine was a mere chattel, and that there was no intention that it should form part of the freehold. That case, like the present, was the case of a hire purchase agreement, with power reserved to the vendor to resume possession of the article in certain circumstances. Notwithstanding the decision in Hellawell v Eastwood…and that the method of attachment was practically the same as in that case, the Court of Appeal held that the article, a gas engine, was a fixture on the part of the freehold, and that it therefore passed to the mortgagee under the mortgage. The court, in giving judgement, pointed out that it did not, and could not, pass as a chattel, but as part of the land, removable, no doubt, as a tenant's fixture, but still a fixture. The effect of that decision is, it seems to me, that it must now be taken that the law was not correctly applied in Hellawell v Eastwood. The decision in Hobson v Gorringe…is binding on us, and we must follow it by holding that the engine in the present case was a fixture and part of the freehold, and therefore not distrainable.”

30.
Pole-Carew v Western Counties and General Manure Company Ltd [1920] 2 Ch 97 was a Court of Appeal case concerned with the ownership of various towers and chambers erected by long-term tenants of premises over a 50 year period in connection with their business. Following a fire, the lease was determined and the lessee removed what was left of the materials of the chambers and towers. The chambers were mostly large (140 feet long, 20 feet wide and 14 feet high) and used in the manufacture of sulphuric acid and with the towers and other elements were part of a single apparatus for those purpose. The chambers were supported by wooden framework which rested on but were not mechanically fixed to stone walls and pillars; one chamber rested primarily on unfixed iron columns. The towers were upright chambers enclosed in a wooden framework supported by four wooden posts resting by their own weight on a foundation. Sargant J at first instance found that the chambers and towers were to be regarded as integral portions of one composite building permanently annexed to the freehold and not as chattels or tenant’s fixtures. The Court of Appeal agreed. Lord Sterndale MR said at pages 116-7:

“Many cases were cited to us…I agree with [a text book on Landlord and Tenant law] that "in as much as the whole question is in each case one of fact depending on its own circumstances, the decision in one case can seldom be a guide to a solution in another."

I think they decide generally that attachment or non-attachment to the freehold or to something which is attached to it, is the most important matter to be considered but not absolutely conclusive, but where the articles claimed to be chattels are not so attached, the onus lies heavily on those who deny them to be chattels.

The first point, therefore, for decision is whether these chambers were chattels. It was contended that though they were of great size (140 feet long, 20 feet wide and 13 or 14 feet high) and of great weight

(about 20 tons when empty), they each constituted an independent structure which was completely severable from the walls and underlying structure, and, apart from the difficulty arising from their great size and weight, could be lifted up from the sub-structure, leaving it intact and undisturbed. I do not think this contention is sound. As a great deal of argument was addressed to us on the subject of the mortar, I think it better not to pass it without observation. I do not think it is of any importance. I think the object was probably to make an even bed for the beam or wall plates, although some slight adhesion might take place. The beams seem to me to have been placed as they are in ordinary building, except that the walls were not carried above their level, and therefore there was no necessity for brickwork above them, and they were kept in their place by the weight of the superstructure…I wish to adopt the language of Sargent J on this point: "If you look at the size and permanence and the general character of the structure and the absence of any definite line of demarcation or division, the absence of any unity in the upper structure as distinguished from the lower structure, I think one is driven to the conclusion that the whole structure forms one single unit and is of the nature of a building, that it is not a chattel, that it is a fixture, and that the lower portion of this unit being embedded in the land by ordinary foundations, it cannot be considered a tenant's fixture, and must be considered from the beginning as being something permanently annexed to the freehold of the nature of the building." The towers present more difficulty. From their construction, which I have already described, there would be some reasonable ground, if they stood alone and unconnected with anything else, for contending that they were chattels, but they were not isolated or unconnected. They were connected by pipes, as I have described, with the burners and chambers, and were a necessary and integral part of a sulphuric acid plant, and in my opinion they must be considered as a part of the whole structure, in the same way that movable parts of an engine are considered as an integral part of the engine…[references quoted]"

31.
Warrington LJ broadly agreed saying at page 120:

"…I think the entire series of structures must, for the purposes of this case, be regarded as one composite building, composed of four parts, each of which is also a building, and if that composite building or any of the minor buildings composing it (treating the building in each case as a single whole) is attached to the inheritance then the whole of such building is so attached…

So far I have said nothing about the towers. Each of these stands on four legs and each leg is dropped into an iron shoe standing on a stone foundation fixed in the ground, each shoe is kept in position by a projecting boss dropped into a hole in the stone foundation. The shoes are in no way affixed to the stone. Looked at by themselves apart from the chambers and from the purposes which they are intended to serve, these towers would, I think, be properly held to be chattels. Like the barn and the granary on staddles, the mill resting on the ground, and the other mill resting on but not attached to a brick foundation they are in no way affixed, and would be capable of being moved without disturbing the soil. But I think they cannot properly be regarded by themselves. They are an essential part of the apparatus, the chambers constituting the bulk of it would be useless without the towers, and the towers would be useless without them. The chambers and the towers are and must be connected together, and if, as I think is the case, the chambers have been so constructed that they cannot be regarded as chattels the same result must, in my opinion, follow in respect of the towers which are an accessory to the rest of the apparatus…"

32.
In **Melluish v BMI (No.3) Ltd** [1996] 1 AC 454, the House of Lords considered, in the context of a tax case involving capital allowances for plant and machinery installed by BMI through leasing

arrangements in local authority housing, whether equipment must be considered as part of the land, in circumstances in which BMI retained a right to remove equipment at the expiry of the term of the lease or on determination of the lease in the event of default. Lord Browne-Wilkinson gave the leading judgement saying at pages 72-3:

“The Court of Appeal… unanimously allowed an appeal…in relation to the plant fixed to the property of which the local authority retained possession…They held that the concept of a fixture which remains personal or removable property was a contradiction in terms and an impossibility in law. The future right to remove equipment at the expiry of the term or in the event of a default by the local authority did not mean that the equipment "belongs" to the taxpayer company so long as it remains attached to the realty.

I agree with the conclusion and reasoning of the Court of Appeal. The equipment in these cases was attached to the land in such a manner that, to all outward appearance, they formed part of the land and were intended so to do. Such fixtures are, in law, owned by the owner of the land. It was suggested in argument that this result did not follow if it could be demonstrated that, as between the owner of the land and the person fixing the chattel to it, there was a common intention that the chattel should not belong to the owner of the land. It was said that clause 3.10 of the master lease disclose such an intention in the present cases. In support of this argument reliance was placed on the decision in Simmons v Midford where Buckley J held that even where the outward and visible signs were only consistent with the chattels (in that case an underground drain) having become part of the land, the circumstances and language used in the grant of the right to lay the drain showed an intention that the ownership of the drain should not be vested in the owner of the soil. He held that in consequence the drain was not owned by the owner of the soil in which had been laid.

Unfortunately, the decision in Hobson v Gorringe…was not cited to Buckley J. That case (which was approved by the House in Reynolds v. Ashby and Son Ltd [1904] AC 466) demonstrates that the intention of the parties as to the ownership of the chattel fixed of the land is only material so far as such intention can be presumed from the degree an object of the annexation. The terms expressly or implicitly agreed between the fixer of the chattel and the owner of the land cannot affect the determination of the question whether, in law, the chattel has become a fixture and therefore in law belongs to the owner of the soil…The terms of such agreements will regulate the contractual rights to sever the chattel from the land as between the parties to that contract and, where an equitable right is conferred by the contract, as against third parties. But such agreement cannot prevent the chattel, once fixed, becoming in law part of the land and as such owned by the owner of the land so long as it remains fixed. To the extent that Simmons v Midford decides otherwise it was wrongly decided.

33.
Another House of Lords case was **Elitestone Ltd v Morris** [1997] 2 All ER 513 in which consideration was given to whether a chalet bungalow which simply rested by its own weight on concrete pillars attached to the ground was to be considered as part of the land. Lord Lloyd of Berwick gave the first reasoned judgment; Lords Nolan, Nicholls and Browne-Wilkinson agreed with him and Lord Clyde. As observed by Lord Lloyd (page 516b), the chalet bungalow was "not like a Portakabin, or mobile home [and that the] nature of the structure is such that it could not be taken down and re-erected elsewhere [and it] could only be removed by a process of demolition." He went on:

“Thus, the sole remaining issue for your Lordships is whether Mr Morris’s bungalow did indeed become part of the land, or whether it has remained a chattel ever since it was first constructed before 1945.

It will be notice that in framing the issue for decision I have avoided the use of the word ‘fixture’. There are two reasons for this. The first is that ‘fixture’, though a hallowed term in this branch of the law, does not always bear the same meaning in law as it does in every day life. In ordinary language one thinks of a fixture as being something fixed to a building. One would not ordinary think of the building itself is a fixture. Thus in Boswell v Crucible Steel Co [1925] 1 KB 119…the question was whether plate glass windows which formed part of the wall of a warehouse were landlord’s fixtures within the meaning of repairing covenants. Atkin J said at [page]123…:

‘…I am quite satisfied that they are not landlord’s fixtures, and for the simple reason that they are not fixtures at all in the sense in which the term is generally understood. A fixture, as that term is used in connection with the house, mean something which has been affixed to the freehold as accessory to the house. It does not include things which were made part of the house itself in the course of its construction.’

Yet in Billing v Pill…[1954] 1 QB 70 at 75 Lord Goddard CJ said:

‘What is a fixture? First, the commonest fixture is a house. The house is built into the land, so the house, in law, is regarded as part of the land; the house and the land are one thing.’

There is another reason. The term fixture is apt to be a source of misunderstanding owing to the existence of the category of so-called ‘tenants’ fixtures’…which are fixtures in the full sense of the word (and therefore part of the realty) but which may nevertheless be removed by the tenant in the course of or at the end of his tenants it is. Such fixtures are sometimes confused with chattels which have never become fixtures at all. Indeed, the confusion arose in this very case. In the course of his judgement Aldous LJ quoted at length from the judgement of Scott LJ in Webb v Frank Bevis Ltd [1940] 1 All ER 247. The case concerned a shed which was 135 ft long and 50 ft wide. The shed was built on a concrete floor to which it was attached by iron straps. Having referred to Webb v Frank Bevis Ltd and a decision of Hirst J in Deen v Andrews [1986] 1 EGLR 262 Aldous LJ continued:

‘In the present case we are concerned with a chalet which rests on concrete pillars and I believe falls to be considered as a unit which is not annexed to the land. It was no more annexed to the land than the greenhouse in Deen v Andrews or the large shed in Webb v Bevis. Prima facie, the chalet is a chattel and not a fixture.’

But when one looks at Scott LJ’s judgement in Webb v Frank Bevis it is clear that the shed in question was not a chattel. It was annexed to the land, and was held to form part of the realty. But it could be severed from the land and removed by the tenant at the end of his tenancy because it was in the nature of a tenant’s fixture, having been erected by the tenant for use in his trade.…

For my part, I find it better in the present case to avoid the traditional twofold distinction between chattels and fixtures, and to adopt the threefold classification set out in Woodfall Landlord and Tenant release 36 (1994) vol 1, p13/83, para 13.131:

‘An object which is brought onto land may be classified under one of three broad heads. It may be (a) a chattel; (b) a fixture; or (c) part and parcel of the land itself. Objects in categories (b) and (c) are treated as being part of the land’

So the question in the present appeal is whether, when the bungalow was built, it became part and parcel of the land itself. The materials out of which the bungalow was constructed, that is to say that the timber frame walls, the feather boarding, the suspended timber floors, the chipboard ceilings and so on, were all, of course, chattels when they were brought onto the site. Did they cease to be chattels when they were built into the composite structure? The answer to the question, as Blackburn J pointed out in Holland v Hodgson (1872) LR 7 CP 328 at 334…depends on the circumstances of each case, but mainly on two factors, the degree of annexation to the land and the object of the annexation.

Degree of annexation

The importance of the degree of annexation will vary from object to object. In the case of a large object, such as a house, the question does not often arise. Annexation goes without saying…

Purpose of annexation

Many different tests have been suggested, such as whether the object which has been fixed to the property has been so fixed for the better enjoyment of the object as a chattel, or whether it has been fixed with a view to effecting a permanent improvement of the freehold. This and similar tests are useful when one is considering an object such as a tapestry, which may or may not be fixed to a house so as to become part of the freehold…These tests are less useful when one is considering the house itself. In the case of the house, the answer is as much a matter of common sense as precise analysis. A house which is constructed in such a way so as to be removable, whether as a unit or in sections, may well remain a chattel, even though it is connected temporarily to mains services such as water and electricity. But a house which is constructed in such a way that it cannot be removed at all, save by destruction, cannot have been intended to remain as a chattel. It must have been intended to form part of the realty. I know of no better analogy than the example given by Blackburn J in Holland v Hodgson…at 242:

‘Thus blocks of stone placed one on top of one another without any water also meant that the purpose of forming a dry stone wall would become part of the land, though the same stones, if deposited in a builder’s yard and for convenience sake stacked on top of each other in the form of a wall, would remain chattels.’

Applying that analogy to the present case, I do not doubt that when Mr Morris’s bungalow was built, and as each of the timber frame walls were placed in position, they all became part of the structure, which was itself part and parcel of the land. The object of bringing the individual bits of wood onto the site seems to be so clear that the absence of any attachment in the soil (save by gravity) becomes an irrelevance."

34.
Lord Clyde gave the only other reasoned judgment. Starting at page 520g, he said:

“It is necessary at the outset to define what the bungalow comprises. It seems from the facts in the present case is if some form of actual attachment of the bungalow to realty might exist, in the connection with the main electric supply cable and certain drain pipes. But these matters have not been explored in the facts and we are required to proceed on the basis that the bungalow is not physically attached to the land. The next consideration is whether the foundations form part of the bungalow. These are sunk into the ground and, if they were to be treated as part of the bungalow, would clearly be an element of physical connection with the ground. But it does not appear that there is any particular adaptation of the foundations to the structure above or any adaptation of the

structure to suit the foundations. The main structural elements of the bungalow simply rest on the concrete blocks. The bungalow and the foundations are separable from each other and it is not appropriate to treat the whole as a unum quid so as to conclude that the bungalow is built into the ground. It is with the wooden structure alone that the case is concerned…

The question posed by the parties in their agreed statement of facts and issues is: whether the bungalow…was a chattel or a fixture? I entirely share the unease which has been expressed by…Lord Lloyd…on the use of the word 'fixture'…

As the law has developed it has become easy to neglect the original principle from which the consequences of attachment of a chattel to realty derived. That is the principle of accession…A clear distinction has to be drawn between the principle of accession and the rules of removability…

If the problem is approached as one of accession it has to be noted that in the present case the bungalow is not attached or secured to any realty. It is not joined by any physical link which would require to be severed for it to be detached. But accession can operate even where there is only a juxtaposition without any physical bond between the article and the freehold. Thus the sculptures in D'Eyncourt v Gregory (1866) LR 3 Eq 382 which simply rested by their own weight were held to form part of the architectural design for the hall in which they were placed and so fell to be treated as part of the freehold. The reasoning in such a case where there is no physical attachment was identified by Blackburn J in Holland v Hodgson…at 242: 'But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land'…

It is important to observe that intention in this context is to be assessed objectively and not subjectively. Indeed it may be that the use of the word intention is misleading. It is the purpose which the object is serving which has to be regarded, not the purpose of the person who put it there. The question is whether the object is designed for the use or enjoyment of the land or for the more complete or convenient use or enjoyment of the thing itself. As the foregoing passage from the judgement of Blackburn J makes clear, the intention has to be shown from the circumstances. That point was taken up by AL Smith LJ in Hobson v Gorringe at 193…a decision approved by this House in Reynolds v Ashby & Son [1904] AC 466, where he observes that Blackburn J:

'was contemplating and referring to circumstances which showed a degree of annexation and the object of such annexation which were patent for all to see, and not to the circumstances of a chance agreement that might or might not exist between an owner of a chattel and a hirer thereof.'

Regard may not be paid to the actual intention of the person who has caused the annexation to be made…

Accession also involves a degree of permanence, as opposed to some merely temporary provision. This is not simply a matter of counting the years for which the structure has stood where it is, but again of appraising the whole circumstances. The bungalow has been standing on its site for about half a century and has been used for many years as the residence of Mr Morris and his family. That the bungalow was constructed where it is for the purpose of residence and that it cannot be removed and re-erected elsewhere point in my view to the conclusion that it is intended to serve a permanent purpose. If it was designed and constructed in a way that would enable it to be taken down and rebuilt elsewhere, that might well point to the possibility that it still retained its character of a chattel. That the integrity of this chalet depends upon its remaining where it is provides that element of permanence which points to its having acceded to the ground. The Court of Appeal took the view that the bungalow was no more annexed to the land and just as much a chattel as the greenhouse in Deen

v Andrews…But there is a critical distinction between Deen v Andrews and the present case in the fact that the greenhouse was demountable while the bungalow is not. I prefer the conclusion reached by the learned assistant recorder after hearing the evidence and visiting the site to form his own impression of the situation. As he observed towards the end of his judgment…

'…it seems to me clear that by 1985 and probably before, it would have been clear to anybody that this was a structure which was not meant to be enjoyed as a chattel to be picked up and moved in due course but that it should be a long-term feature of the realty albeit that, because of its construction, it would plainly need more regular maintenance.'"

35.
An element of logic and common sense, if not history, must also come into play. There is no building or structure built by humankind which cannot be removed by humankind. Of the Seven Wonders of the World, only the Great Pyramid has largely survived, albeit even that structure has had significant elements (the outer facings) removed by humans. The fact that elements of or within a building or structure can physically or even theoretically be removed can not in itself be determinative of whether something forms or is to form part of land. One also has to bear in mind that all building materials and pieces of equipment are chattels until they become incorporated into or installed in a building or structure

36.
Drawing all these threads together, and in the context of Sections 105(1) and (2) of the HGCRA, the law and practice can be said to be as follows (the following not intending necessarily to be an exhaustive definition of all requirements):

(a) "Construction operations" under Section 105(1)(a) to (c) of the HGCRA involve the various types of work set out in those paragraphs (construction, alterations, repair, maintenance, extension, demolition or dismantling or installation in any building or structure of fittings) forming or to form part of the land. Other provisions such as Section 105(1)(d) to (f) provide that other ancillary operations (cleaning during construction, scaffolding and decoration) also fall within the definition, whether or not it can be said that such work was or was to be "part of the land".

(b) One must remember that HGCRA is engaged by a construction contract for the carrying out of "construction operations"; therefore the Act is engaged even if the construction operations are not completed, properly or at all.

(c) Whether something forms or is to form part of land is ultimately a question of fact and this involves fact and degree.

(d) The factual test of whether something forms or is to form part of the land is informed by but not circumscribed by principles to be found in the law of real property and fixtures. Something which is or is to become a "fixture" will, almost invariably, "form part of the land" for the purposes of the HGCRA.

(e) There is some distinction to be drawn between fixtures, that is, things which are attached to buildings or land, and the land itself. In **Elitestone**, Lords Lloyd and Clyde recognised that distinction between the land and the building itself on the one hand (effectively the same thing) and fixtures fixed to or within a building on the other.

(f) To be a fixture or to be part of the land, an object must be annexed or affixed to the land, actually or in effect. An object which rests on the land under its own weight without mechanical or similar fixings can still be a fixture or form part of the land. It is primarily a question of fact and degree.

(g) In relation to objects or installations forming part of the land, one can and should have regard to the purpose of the object or installation in question being in or on the land or building. Purpose is to be determined objectively and not by reference simply to what one or other party to the contract, by which the object was brought to or installation brought about at the site, thought or thinks. Primarily, one looks at the nature and type of object or installation and considers how it would be or would be intended to be installed and used. One needs to consider the context, objectively established. If the object or system in question was installed to enhance the value and utility of the premises to and in which it was annexed, that is a strong pointer to it forming part of the land.

(h) Where machinery or equipment is placed or installed on land or within buildings, particularly if it is all part of one system, one should have regard to the installation as a whole, rather than each individual element on its own. The fact that even some substantial and heavy pieces are more readily removable than others is not in itself determinative that the installation as a whole does not form part of the land. Machinery and plant can be structures, works (including industrial plant) and fittings within the context of Sections 105(1)(a) to (c) of the HGCRA.

(i) Simply because something is installed in a building or structure does not mean that it necessarily becomes a fixture or part of the land. Mr Justice Dyson in the **Nottingham Community Housing** case was not saying otherwise. A standing refrigerator or washing machine can be installed in a building but nobody, thinking rationally, would suggest that they had become fixtures or part of the land.

(j) 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. Many of the old cases referred to above demonstrate that such fixings did point towards the object so affixed being part of the land. However, the **Gibson Lea** case produced a different answer, even though some items were affixed by nails and screws.

(k) Ease of removability of the object or installation in question is a factor which is a pointer to whether it is to be treated as not forming part of the land. One can have regard however to the purpose which the object or installation is serving, that purpose being determined objectively. The fact that the fixing can not be removed save by destroying or seriously damaging it or the attachment is a pointer to what it is attaching being part of the land. A significant degree of permanence of the object or installation can point to it being considered as part of the land.

Facts

37.
In the result, there was eventually little difference between the witnesses as to the basic facts and in the light of that I find:

(a) Savoye was engaged contractually to and did provide a conveyor system which comprised an extensive roller conveyor system; this was powered by electricity and at important stages by compressed air and it was to be an “intelligent” system controlled and regulated by IT systems, installed throughout. In addition Savoye was to provide mostly new but some refurbished and re-used racking over, under and around the conveyor system. In addition, Savoye was to provide and install other equipment which was to be provided new except for the PAC 600 which was to be returned substantially refurbished.

(b) The racking ran all along the conveyor lines in the picking and replenishment zones. The racking was of a dexxion type (called “Prodex”), with the new being blue and galvanised grey in colour and the older re-used racking being a pale yellow. Photographs attached to Mr Garate’s second statement (Exhibits RG6 and RG9 in particular) show it well both during construction and after the conveyors were in place with goods stacked above. For each bay of racking looked at from the side, there are two tall uprights connected by horizontal bars together with a diagonal bracing bar; below the top horizontal bar there are attached two metal racks sloping from the replenishment to the picking lanes, these racks having a cream or yellow colour system of rollers on to enable goods from the replenishment lane to be placed and roll down (gently) to the picking lane side. Underneath this racking on the picking lane side but connected by horizontal bars to the central uprights are lower horizontal steel supports upon which the conveyor system itself was to rest and to be fixed. The front end (in the picking lane) was supported by a necessarily shorter upright which was supported on the ground. I will call these three uprights the rear, middle and front uprights being the first tall one on the replenishment lane (rear), the second tall one at approximately midpoint between the two lanes (middle) and the short upright at the front on the picking lane (front).

(c) The rear uprights throughout the replenishment lanes included at the base a welded plate which was bolted to the floor with a single “M12” bolt (although there were holes for two bolts if necessary, albeit that it was not necessary in this case). The middle uprights, although they had a plate at their base, were not bolted to the floor. The front uprights rested on rubber feet about 60 to 75 mm in diameter and were not otherwise attached to the floor by bolts. This is the position in respect of the picking and replenishment lanes throughout the building, except where the conveyor system was either carried up to or from the mezzanine or at the end of each of the three main loops on the ground floor. The conveyor system is firmly bolted to the underlying racking structure throughout the installation, by at least 4 bolts per metre. In the many substantial lengths of conveyors which are not located in the picking and replenishment lanes, the (broadly) H-shaped steel supports are bolted to the ground with each H-Shape having two legs and each leg having two steel “M8” bolts bolted into the concrete floor. There are similar arrangements at the end of the replenishment and picking lane loops albeit the H shaped supports create a rising conveyor system in those areas. Where the conveyors rise and descend to and from the mezzanine, they are supported by steel supports which are bolted firmly to the underside of the mezzanine structure, mostly by way of steel angle irons bolted through steel “I” beams supporting the mezzanine floor, as well as steel supports underneath also firmly bolted to the concrete floor. There are 15 lengths of suspended conveyors. The conveyor system on the mezzanine floor is supported by “H” shaped steel supports which are screwed into the substantial chipboard floor with hexagonal screws.

(d) It is now common ground (and rightly so) that the purposes of the bolting of these various supports are stability, the critical need to maintain alignment, protection, health and safety and durability. There is no evidence that the parties actually thought about whether the equipment to be installed was to be a fixture or to form part of the land.

(e) The M12 bolts were about 12 mm wide and a minimum of 65mm long and were fitted into pre-drilled holes in the concrete floor. They had an expanding shaft so that, after being bolted in, the shaft expanded laterally so that they could not readily be dislodged. Indeed, they could only be removed by drilling into and around them in effect to dig them out or by angle grinding the tops off and leaving the truncated shaft in the concrete. They were to be bolted to a substantial torque value. The M8 bolts were about 8mm wide and 40mm long with a hexagonal head and were placed into the drilled holes into which in effect a rawlplug or dowel had been tapped; they were to achieve a torque value albeit

less than for the M12 bolts. Again they would be difficult to remove and some have actually been removed by angle grinding the heads off. M8 bolts are also used on the mezzanine floor, albeit screwed in without a dowel or rawlplug.

(f) Some thousands of bolts have been used to attach the conveyors. Mr Garate gave evidence that 2,192 bolts were used, excluding those on the mezzanine and the bolts attaching the conveyor system to the Prodex racking and attaching that racking to the ground.

Discussion

38.
In broad terms, Ms Day QC argued that Sections 105(1) (a) to (c) of the HGCRA were applicable and that, as a matter of fact and degree, the overall conveyor system to be and actually installed was to form part of the land. She relied upon the amount and type of fixings and, where individual pieces of equipment (such as the carton erectors) were not as such attached by bolts they were all part of an overall IT controlled and automated system and, in some cases, were heavy such that they could not readily be moved. Mr Acton Davis QC argued that Section 105 (1) was not engaged at all, but, if it was, the conveyor system did not and was not intended to form part of the land; he pointed to the ease with which the bolts could be removed or otherwise dealt with, the ease and simplicity with which the whole system or significant parts of it at any material time could be removed or moved around in different configurations and the fact that important pieces of equipment were not fixed to the ground.

39.
As I have broadly indicated earlier in this judgment, I do consider that Sections 105(1) (a) to (c) are engaged, in principle, to substantial plant or machinery which is to be installed within a building or structure. The most obvious references are in sub-sections (b) and (c) with their references to "industrial plant", which must be capable of encompassing industrial conveyor systems, such as that which was installed in the current case, and "fittings" which are clearly to include or be things which are fitted in to buildings. In principle, I can accept that the word "structure" could also include an industrial conveyor system if, as here, it comprised itself a substantial steel structure.

40.
The primary issue between the parties, however, relates to whether the conveyor system to be installed by Savoye was to "form part of the land". The facts here demonstrate that the system was first of all an integrated system within itself (as well as being integrated within Spicer’s warehouse), in that it was or at least was intended to be, with the assistance of the IT, to be a system which would enable in effect goods to be dispatched to be identified, the requisite carton created and to be sent automatically along an extensive conveyor system to be filled with the ordered goods and then covered (with appropriate lids) logos applied together with dispatch labels before being sent to loading bays. Put another way, it all worked together (albeit there are disputes as to whether it worked properly).

41.
The warehouse building into which the conveyor system was to be installed was, essentially, a steel work structure with wall cladding and roof (each of which was a form of sheeting) and with a concrete floor. The mezzanine floor was a steel work structure both in terms of columns and floor supporting beams. The columns must have been supported at their base either by separate stanchion foundations or by a specially reinforced concrete slab. I have no doubt therefore that the mezzanine was part of the building and indeed therefore the land.

42.
The evidence, which I accept, is now clear that the conveyor system was attached to the concrete floor slab on the ground floor and the raised and rising conveyors to the steelwork forming part of the mezzanine; in addition, at the mezzanine level, it was attached by bolts to the floor.

43.
The real question on analysis is whether the conveyor system taken as a whole and as a matter of fact and degree was sufficiently attached to the floors and underside of the mezzanine floor as to give rise to a proper conclusion that it was forming or to form part of the land.

44.
Having heard the evidence and, particularly with the benefit of the site view, I conclude that it was to and did form part of the land for the purposes of Section 105 of the HGCRA. My reasons are as follows:

(a) There were substantial and extensive fixings (by bolts) of the system to the body of the building, that is the floors and heavy duty steel work. There were large numbers (in the thousands) of bolts drilled into the floors and via angle irons into the mezzanine steelwork, annexing the system to the building. The bolts also were substantial and, save for those holding the conveyor legs down on the chipboard floor of the mezzanine, were so firmly fixed that they could not readily be removed without either destroying the bolts themselves or by significantly damaging the concrete floor surrounding each individual bolt. These bolts were industrial in type.

(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. It extends to the best part of a kilometre in length. The conveyors themselves (as opposed to the adjacent equipment such as the carton erectors) in terms of the plan area of the system as a whole cover at least 95% or more of the area covered by the overall conveyor system.

(c) The conveyor system was clearly intended, both subjectively and objectively, to be relatively permanent and to perform a key role in the warehouse. There was (proper) acceptance by Spicers' witnesses that there was a degree of permanence and, just seeing the large scale of the conveyor system, one can readily conclude that this was not anything like a shop-fitting contract such as was considered by HHJ Seymour QC in the **Gibson Lea** case. It was installed to enhance the value and utility of the premises to which it was annexed.

(d) It is true that the racking system which accommodated the conveyor system on the ground floor and which provided the picking and replenishment lanes was bolted to the ground only by one bolt on one of the three column legs (per racking bay) but those bolts were substantial bolts and were there to provide in effect a structural type fixing to ensure stability, durability, alignment, protection and health and safety. Its combined purpose can properly be said to be firm attachment to the concrete slab. The conveyor system which rested on the lower level of the racking system on the picking lane side was in itself firmly and necessarily bolted extensively to the racking system.

(e) The fact that some of the elements comprising the system (namely those set out in Paragraph 6 (e) above) were not as such mechanically attached to the floor does not undermine the conclusion. This is essentially for two reasons, the first being that they were all important parts of an integrated system which was designed to work together and were connected together by a computer system and integrated compressed air and electrical systems. The second reason is that the carton erectors and the "Jivaro" machines were in themselves large and their weight was substantial; although they could

be moved, that would involve heavy lifting equipment and would not be undertaken lightly. The weighing machines were physically part of the conveyor lines.

(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. Many systems, such as a simple heating system, have elements which can be easily removed. It is the work of a minute or two for a skilled plumber, for instance, to isolate and remove a radiator from a wall. If one looks however at the conveyor system as a whole, it would take a very substantial effort to remove it all and, I have no reason to doubt, it could well take as long to remove it as it could or at least should have taken to install, which the evidence suggests should have been up to several months. The fact that before attachment or after removal elements of the conveyor system were or could revert to being chattels is neither here nor there.

45.
It follows from the above that Section 105(1) of the HGCRA is engaged in relation to the conveyor system installation in this case, that it represented "construction operations" and that therefore the adjudicator had jurisdiction to decide on the dispute referred to him. But there being no other challenge to the efficacy or validity of the decision, that decision should be enforced by the Court.

Decision

46.
There will be judgment in favour of Savoye by way of enforcement of the decision. I will leave it to the legal teams to make submissions on costs either (and preferably) in writing or orally.