

Memorandum

To: Mr. E. H. Stetson

Date: July 9, 1953

From: W. W. Mangels

Subject: [X]

Petitioner sold furnished apartment houses during the period January 1939 to October 1949. By audit, it was determined that personalty of substantial value was sold in connection therewith. Petitioner disagreed with the view of our district auditors that certain items sold constituted personalty rather than realty. He has submitted several inventories of apartment houses and it was agreed that headquarters should examine these items, make a ruling concerning them, and, on this basis, the district office might further investigate the inventories, and make any necessary re-adjustments.

On December 11, 1950, I wrote to Mr. Hamlin concerning my views on the inventories and Mr. Saunders of Unit 4 has returned the file for one more review by the legal staff before advising the district office.

You are first referred to my memorandum of December 11, 1950, to Mr. Robert G. Hamlin for a background on the general legal principles involved.

After reviewing the authorities I would like to revise that memorandum to a considerable extent, and, accordingly, I will re-state my recommendation with respect to the specific items in the inventories furnished to us of the [subject apartments] of [various California cities].

Let us start with the [X] Apartment list. It is my recommendation that we should regard window shades, venetian blinds, curtain rods, and drapery rods as fixtures and therefore as exempt when sold along with the land by the owner of the land. We probably could go either way on this but there are no California cases which would compel us to rule to the contrary. (It might also be remembered that venetian blinds are regarded as fixtures in our somewhat different problems relating to construction contractors under Ruling 11.)

The next problem is wall beds. For purposes of assessment of property apartment house wall beds are regarded as fixtures. We could say, therefore, that all wall beds should be regarded as fixtures. See, in this connection, your memorandum of March 15, 1945, to Mr. [A]. Earlier California cases, Southern California H. & M. Co. v. Borten, 46 Cal. App. 524 and Fisher v. Pennington, 116 Cal. App. 248, specifically held that wall beds connected to the door of a closet by small plates fastened by a few screws that could be easily removed without disfiguring the side of the door that ornaments the side of the room, and which were intended to be a part of the furnishings of the apartment, were personalty. However, in Pacific Mortgage Guaranty Co. v.

Rosoff, 20 Cal. App. 2d 384, rather slightly attached wall beds were held to be fixtures. Therefore, in the interest of consistency with the Assessor's Handbook, I believe we should regard attached wall beds as realty.

Next, 15 entrance hall carpets and pads in living room. We should regard tacked carpet (wall-to-wall) as realty but we should regard rugs (untacked) as personalty.

Next, 49' x 12' laundry platform on roof. While closer examination might lead to a contrary result, it would appear that this was in the nature of a fixture. If so, the 294' clothes line connected therewith might also be regarded as a functional part of that fixture and therefore realty.

The intercommunicating telephone system would appear to be real property.

Gas stoves, when installed in a dwelling, are generally regarded, under the law, as personal property rather than fixtures. See *Daniger v. Hunter*, 114 Cal. App. 2d 796, where it was so held.

One United States oil-fired hot water heater and tank in basement. Unless an investigation reveals that this property is not substantially affixed, it would appear that in accordance with our general approach in construction contract problems under Ruling 11, we should regard this as an item of real property.

One Frigidaire Compressor and 1 H.P. motor in basement. In *Andrews v. First Realty Corporation*, 66 Cal. App. 2d 407, the court sustained the finding of the lower court that two refrigerator compressors along with the electrical apparatus connected therewith constituted personal property. The court said, in referring to the compressors and the removed electrical equipment:

“There was evidence that the house could be and had been operated without electrical refrigeration and was properly equipped for ice refrigeration. The electrical equipment could be removed without damage and the coil was attached to the refrigeration box by four removable bolts. This is sufficient to support the finding that the equipment removed was not a fixture.”

On the other hand, another view could be taken of this problem because of language in *Frick v. Frigidaire Corporation*, 119 Cal. App. 707, and in the earlier case of *Marker v. Williams*, 39 Cal. App. 674 at 677. Those cases take the position that where a central compressor or compressors and motor or motors are set on a concrete base, fastened thereto by bolts and screws, with tubing connected to the compressor and with the tubing running through the walls into individual refrigerator boxes, necessitating tearing away of wall plaster to remove the tubing, that the entire unit constitutes a fixture (real property).

Since refrigerator systems are regarded as fixtures in the Assessor's Handbook and since refrigeration units are regarded as “fixtures” under Ruling 11 in problems relating to construction contracts, I believe that if inspection reveals a factual situation substantially similar to that set out above that we should regard the compressor as real property, that is, as being a part of an entire

functional unit that might best be regarded as real property.

On the other hand, if inspection does not reveal such substantial affixation we might regard the compressor as personal property by drawing an analogy to the Andrews case.

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We next come to the [Y] Apartments. For our opinion concerning most of these items, see Apartments analysis immediately above. The only new item is the oil field Kewanee boiler and burner and the hot water 500 gallon tank in the basement. If these items are substantially affixed to the realty by means of bolts, or otherwise, it is my opinion that they should be regarded as real property.

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Next comes the [Z] Apartments list. The six fire hose racks and hose in the hallways are new items not discussed above. It is my opinion that while the racks are apparently fixtures the hose should be regarded as personalty.

The elevator, of course, is realty.

Reference is also made to 35 built-in refrigeration chests listed under this apartment. If these are built into the walls and are a part of an integrated refrigeration system, it is my opinion that they should be regarded as realty.

(Note: On the other hand, if the 35 chests were not substantially built in, what little California case law there is indicates that individual refrigeration chests constitute personal property. See the language in the cases of Daniger v. Hunter, 114 Cal. App. 2d 796 and Andrews v. First Realty Corporation, 6 Cal. App. 2d 407.)

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Next comes [V] Apartments. Most of these items have already been discussed. In their inventory, however, reference is made to 33 inter-door beds in the living rooms. If these inter-door beds are substantially affixed to the doors or walls, we should regard them as realty, as indicated previously. On the other hand, if they may be moved or rolled throughout the living room, or are otherwise not substantially affixed, I would regard them as personalty.

I assume that the [P] Water heaters are so affixed as to constitute realty. We do not have enough information about the two stationary wall tubs located on all four floors to render a ruling.

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With respect to the [W] Apartments, I believe that the items listed have already been discussed.

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Next comes [U] list. Again, most of the items listed have already been discussed. I should, however, like to add the following comments.

I should think that the clock on or near the clerk's desk should probably be regarded as personalty even though it is stated to be attached to the building. I am of the opinion that, normally, even an affixed clock should be regarded as personalty.

A neon sign is normally a fixture.

The opinion relating to refrigeration chests and wall beds, of course, has already been stated. I, however, note a reference to wall beds in the basement. Of course, if they are merely being stored there the wall beds are being sold as personal property.

Reference is also made to the 11' x 5' butcher's meat case in the basement. Normally, we regard display cases as personal property, as, for example, in supermarkets. Furthermore, if this were merely being stored in the basement, it would obviously be personal property.

I believe that the test for the ventilation system and the furnace room items has already been indicated.

W. W. Mangels

WWM:ja