



TORT CLAIMS ACT UPDATE

Lofurno v. Garnet Valley Sch. Dist., 2006 Pa. Commw. Lexis 453 (Pa. Commw. Ct., May 3, 2006): On April 29, 2002, 15 year old Lofurno injured the fingers on both of his hands while operating a vertical belt sander during a class at the Garnet Valley School District. Id. at *2. The Court of Common Pleas held that the belt sander was a fixture and not personal property; therefore, a claim could be brought under the real property exception to governmental immunity set forth in the Act commonly referred to as the Political Subdivision Tort Claims Act (Tort Claims Act), 42 Pa. C.S. §§ 8541-8542. Id. at * 6-7. The Commonwealth Court reversed. Id. at * 16.

Courts have historically applied the following principles in determining whether a chattel used in connection with real estate constitutes personalty or realty:

First, those [chattels] which are manifestly furniture, as distinguished from improvements, and not peculiarly fitted to the property with which they are used; these always remain personalty. Second, those which are so annexed to the property, that they cannot be removed without material injury to the real estate or to themselves; these are realty, even in the face of an expressed intention that they should be considered personalty . . . Third, those which, although physically connected with the real estate, are so affixed as to be removable without destroying or materially injuring the chattels themselves, or the property to which they are annexed; these become part of the realty or remain personalty, depending on the intention of the parties at the time of annexation; in this class fall such chattels as boilers and machinery affixed for the use of an owner or tenant but readily removable.

Id. at * 9-10 (quoting Clayton v. Lienhard, 167 A. 321, 322 (Pa. 1933) (citations omitted)).

The Commonwealth Court agreed with the School District that many of the lower court's findings of fact and conclusions of law were not supported by the record. Id. at *14. While evidence existed that the sander was bolted to the floor, the Court noted that the record was devoid of evidence that, once bolted, the machine could not easily be unbolted in order to be moved. Id. at * 14-15. In addition, there was no evidence of record that unbolting the sander would cause material injury to the classroom or the sander. Id. at * 15. Moreover, the Court found that there was no evidence of hardwiring, dedicated electrical lines or permanent attachment to a dust collection system. Id. at * 15. Furthermore, there was no evidence that the classroom had been physically altered to accommodate the electrical requirements of the sander or that the sander must remain in its current location in order to physically connect to either the 220-volt electrical line or the dust collection system. Id. Finally, the Court explained that without additional evidence, the fact that the sander could only be bolted to one location in the classroom was not dispositive. Id. at * 16. The Court held that based upon the record and supported findings, as a matter of law, the sander was personalty and not a fixture. Id. at * 16.

For questions about these and other Tort Claims Act cases, please contact Robert G. Hanna, Jr., Esquire at the following Email address: rhanna@laverylaw.com