

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF NORTON SHORES,

Plaintiff-Appellee,

v

GEORGE H. GRABOW, RONALD G. GRABOW,
DENNIS D. GRABOW and G. GRABOW
DISTRIBUTING, INC.,

Defendants-Appellants.

UNPUBLISHED
November 4, 1997

No. 184747
Muskegon Circuit Court
LC No. 91-027156 CC

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Following a remand in this Court's Docket No. 154325 for a determination of whether the property at issue in this condemnation action constituted fixtures or mere personal property, the Muskegon Circuit Court, pursuant to this Court's directive to evaluate that question using the standards of *City of Algonac v Robbins*, 69 Mich App 409, 413; 245 NW2d 68 (1976), concluded that all the property in question was trade fixtures which were movable, and accordingly that defendants were entitled to compensation only for moving expenses. Defendants' appeal of right has been held in abeyance pending the Michigan Supreme Court's decision in *In re Condemnation of Private Property to Acquire Land for the Detroit Metropolitan Wayne County Airport*, 211 Mich App 688; 536 NW2d 598 (1995), lv gtd 453 Mich 925 (1996).

That decision has been affirmed sub nom *Wayne County v Britton Trust*, 454 Mich 608; ___ NW2d ___ (1997). Pertinent to the present case, the Court there reviewed some of its prior decisions concerning the test for differentiating a fixture from mere personal property, discussing with approval its prior decision in *Colton v Michigan Lafayette Building Co*, 267 Mich 122; 255 NW 433 (1934). 454 Mich at 616. That discussion suggests that some of the property at issue in the present case, such as a security system, if it is not physically attached to the realty, is probably sufficiently constructively attached as to constitute a fixture, giving defendants the option of receiving either value in place or detach/reattachment costs of such fixtures. 454 Mich at 624. Items such as a safe, however, most

likely constitute “ordinary movable office furniture” and thus personal property, for which defendants are entitled only to moving expenses, limited to the statutory maximum of \$15,000. 454 Mich at 623.

In applying the test established in *City of Algonac v Robbins*, the trial court may have been misled as to the proper standards for differentiating fixtures from personal property in condemnation actions. It, and this Court, correctly held that, to the extent any of the property in question is personal property, defendants are not entitled to compensation, other than moving expenses. The posture of this case, however, requires a further remand to the circuit court for reconsideration of the status of each item of contested property as a fixture or personal property.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs