

KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 98**

Date: **2026 05 11**
Docket: KBG-SA-00127-2026
Judicial Centre: Saskatoon

BETWEEN:

HCC HOLDINGS LTD.

Plaintiff

- and -

UNDER THE SUN GROWERIES INC.

Defendant

Counsel:

Randall T. Klein, K.C.
Thomas M. Baldry

for the plaintiff
for the defendant

FIAT
May 11, 2026

R.S. SMITH J.

Introduction

[1] On July 1, 2019, HCC Holdings Ltd. [HCC] entered into a lease agreement with Under The Sun Groweries Inc. [UTSG] for the property known as Surface Parcel #149941952 [Premises].

[2] The original lease expired in March 2023. The parties entered

negotiations which resulted in the signing of a new lease on April 1, 2023 [Lease]. When the Lease expired, HCC and UTSG agreed to an *ad hoc* extension on a month-to-month basis. During that time, UTSG made efforts to obtain financing in order to purchase the Premises. Suffice it to say, those efforts were unblemished by success.

[3] UTSG fell into significant arrears, and HCC began enforcement proceedings in February 2026.

[4] On March 11, 2026, a consent order was granted by Justice Currie which provided, *inter alia*, that UTSG was responsible to clean up the Premises and, in addition, UTSG consented to the issuance of a Writ of Possession in favour of HCC.

[5] UTSG was in the process of removing itself and its equipment from the Premises when an argument arose between UTSG and HCC as to what equipment UTSG was entitled to take.

[6] UTSG asserts it is entitled to keep possession and remove its Trade Fixtures. HCC takes the position that the equipment in question has reverted to its ownership. There is also a dispute with respect to compliance of UTSG respecting the consent order of Justice Currie in relation to cleaning up the Premises.

Background

[7] UTSG is in the business of licensed cannabis production. It grows cannabis seed in an indoor production facility. The seeds are planted and harvested at an outdoor farm. The resulting cannabis plants are processed to extract oils for wholesale and retail distribution. As noted, the original lease was in 2019 and was replaced by the Lease. The parties agree that is the document which governs their relationship.

[8] The Lease had specific language touching on the issue of Fixtures/Trade Fixtures. Clause 7(r) provides as follows:

7.(r) FIXTURES

- (i) All alterations, decorations, additions, fixtures and improvements made by the Tenant, or made by the Landlord on the Tenant's behalf (other than the Tenant's trade fixtures) shall immediately become the property of the Landlord upon affixation or installation, without compensation therefore to the Tenant, but the Landlord is under no obligation to repair, maintain or insure such alterations, decorations, additions, fixtures or improvements. Such alterations, decorations, additions, fixtures or improvements shall not be removed from the Premises either during or at the expiration or earlier termination of the Term except that:
 - (1) the Tenant may during the Term in the usual or normal course of its business and with the prior written consent of the Landlord remove its trade fixtures, PROVIDED such trade fixtures have become excess for the Tenant's purposes or the Tenant is substituting new and similar trade fixtures therefor, and PROVIDED that in each case:
 - a. the Tenant is not in default under this Lease; and
 - b. such removal is done at the Tenant's sole cost and expense.
 - (2) the Tenant shall at the expiration of the Term, at its own cost, remove all of its trade fixtures, and such of the alterations, decorations, additions, fixtures and improvements made by the Tenant as the Landlord requires to be removed.
- (ii) If the Tenant does not remove its trade fixtures at the expiration or earlier termination of the Term, the trade fixtures shall, at the option of the Landlord, become the property of the Landlord and may be removed from the premises and sold or disposed of by the Landlord in such manner as it deems advisable.
- (iii) The Tenant shall, in the case of every such installation or

removal either during or at the expiration of the Term effect the same at times designated by the Landlord and promptly make good any damage caused to the Premises or the Building.

(iv) **For greater certainty, and without limitation, the Tenant's trade fixtures shall not include any:**

- (1) heating, ventilating or air-conditioning systems, facilities or equipment in or serving the Premises whether or not installed by the Tenant or at its request;**
- (2) other utility systems, facilities or equipment in or serving the premises;**
- (3) floor covering affixed in any manner and to any extent to the floor of the Premises;**
- (4) light fixtures and the tracking thereof,**
- (5) storefront and doors;**
- (6) demising walls, ceilings, partitions, special wall or ceiling finishes or paneling, floors;**
- (7) fixtures of any kind which are affixed in any manner or to any extent to the aforementioned;**

all of which are and are deemed to be leasehold improvements.

[Emphasis added]

[9] The wording of clause 7(r) was a significant deviation from the initial lease signed in 2019. The first lease had a more favourable treatment to UTSG respecting Trade Fixtures.

Analysis

a. Fixtures/Trade Fixtures

[10] The law dealing with the distinction between fixtures which revert to the

landlord and trade fixtures which are kept by the tenant is well-ploughed ground. Starting at paragraph 41 of its brief, UTSG does a good job reviewing the jurisprudence:

41. The law relating to removal of a tenant's fixtures and chattels at the expiration of a lease is well-settled. It was summarized by the Ontario Court of Appeal in *2105582 Ontario Ltd. (Performance Plus Golf Academy) v. 375445 Ontario Limited (Hydeaway Golf Club)*, 2017 ONCA 980 ("*Performance Plus*"), at paragraphs 32 to 38:

[32] Fixtures are assets that are sufficiently affixed to real property such that they are considered permanent in nature and part of the land. Whether fixtures become part of the land depends on the degree and object of annexation to the land: *Stack v. T. Eaton Co.* (1902), 4 O.L.R. 335, [1902] O.J. No. 155, 1902 CarswellOnt 399 (Div. Ct.). This case concerns the fate of fixtures upon termination of a lease. The general rule is that fixtures remain with the land following the end of a tenancy; but not all fixtures fall within this rule.

[33] Trade fixtures are assets that are affixed to leased premises by a tenant for trade or commercial purposes. Courts have consistently held that tenants are presumptively allowed to remove trade fixtures at the end of a tenancy so long as the removal does not materially damage the premises ... [citations removed]

[34] Importantly, as this court held in *Bank of Nova Scotia v. Mitz* (1979), 1979 CanLII 1789 (ON CA), 27 O.R. (2d) 250, [1979] O.J. No. 4491, 106 D.L.R. (3d) 534 1979 CarswellOnt 741 (C.A.), at p. 538 D.L.R., at para. 11, there is a distinction in the analysis depending on whether the attempted removal of the disputed asset occurs in the context of a lease versus the sale of real property. In the former case, there appears to be a presumption that a tenant would not have an objective intent to affix an asset on a permanent basis such that it would become part of the real property at the end of the lease: *Bank of Nova Scotia*, at pp. 538-39 D.L.R. In other words, the object of annexation is presumptively not one of permanence.

[35] The jurisprudence demonstrates that the determination of whether an asset is a fixture or trade fixture upon termination of a lease is highly fact-specific.

For example, in *Webb v. Frank Bevis Ltd.*, [1940] 1 All E.R. 247 (E.W.C.A.), the English Court of Appeal held that a 6,750-square-foot shed was a trade fixture and removable by the tenant at the end of the lease. The shed in that case was covered with a corrugated iron roof that rested on wooden posts. The wooden posts, in turn, were affixed to a concrete floor – but not embedded in the concrete. The court held that the shed could be taken apart without damage to the leased premises and was a trade fixture. By contrast, the concrete floor was not a trade fixture since it could not be removed without damage to the leased premises.

[36] *Webb* was implicitly affirmed by the United Kingdom House of Lords in *Elitestone Ltd. v. Morris*, [1997] 1 W.L.R. 687 (U.K.H.L.), at p. 691. In *Elitestone*, the House of Lords was asked to determine whether a bungalow constructed on leased real property was a chattel or fixture that was part of the land. The House of Lords affirmed the trial judge's conclusion that the bungalow was part of the land because such determinations depended on the facts of each case: *Elitestone*, per Lord Berwick, at p. 692; and per Lord Clyde, at p. 696. It was also significant that the tenant claiming the bungalow did not construct the bungalow. It existed prior to the tenant occupying the premises.

...

[38] The above cases – as well as *Richardson* and *Starmark Property* – demonstrate that the determination of whether an asset is a fixture versus a trade fixture or chattel is a question of mixed fact and law. In this case, the trial judge applied the three requisite elements of the legal test for a trade fixture: (i) whether the asset is affixed to the ground by the tenant; (ii) whether the asset is used for the purpose of a trade or commerce; and (iii) whether the asset can be removed without material damage to the premises. Only element (iii) was in question at trial.

42. Accordingly, the legal test respecting removal of a trade fixture involves a consideration of:
 - (a) Whether the asset is a fixture or a chattel;
 - (b) If a fixture, whether the asset is used for the purpose of trade or commerce; and

(c) Whether the asset can be removed without material damage to the premises.

43. With respect to the third factor, courts have held that where any damage to the leased premises can be compensated for in damages, the third factor does not bar such removal. Other courts have characterized the “material damage” requirement as requiring “irreparable damage”.
44. With respect to the determination of whether an item is a fixture or a chattel, the classic test was summarized by the Alberta Court of Appeal in *AMIC Mortgage Investment Corporation v Investors Group Trust Co. Ltd.*, 1985 ABCA 173, as follows:

Whether a particular chattel has become a fixture is essentially a question of fact. The court must consider the degree of annexation and whether the object of the annexation is the enjoyment of the chattel as distinct from the improvement of the property, or, put another way, whether the annexation is for the convenience of the owner rather than for the purpose of improving the lands and premises.

45. A tenant’s common-law right to remove trade fixtures can also be modified by the terms of a lease. However, such modification must be expressed in clear language:

[36] In terms of legal principles, it is clear that the right to deprive a tenant of its trade fixtures must be set out in clear language and that the courts will construe the covenant strictly against the lessor ...

46. More generally, when reviewing a lease, the Court must interpret the lease as a whole, in a way that gives meaning to all of its terms and avoids an interpretation that renders one or more of its terms ineffective. In doing so, the Court must have regard to sound commercial principles and good business sense and avoid commercial absurdity. The Court may consider the objective factual matrix underlying the negotiation of the contract, but not subjective evidence of party intention.

[Footnotes omitted]

b. Equipment in Debate

[11] The chattels/fixtures that the parties disagree on are as follows:

- a. a Keep Rite Chiller;
- b. shelving on which cannabis plants were grown;
- c. a Cannabeast distiller;
- d. Vitalis Q machine, including cosolvent injection equipment;
- e. process piping and ductwork affixed to walls or running through walls; and
- f. electrical shut-off switch and associated wiring;

collectively [Equipment].

[12] With the exception of the shelving, all of the remaining Equipment is plumbed and wired into the building system. Generally, the Equipment could be removed without permanently damaging the building. However, with respect to the Cannabeast distiller, a wall must be taken down and replaced.

[13] Counsel for each party has diligently and in some detail reviewed each piece of Equipment and made arguments on behalf of their respective client. In my view, there is no real debate with respect to the shelving. The shelving was used to hold the growing cannabis plants. The shelves have wheels and are on tracks. The shelves can be easily lifted out of the tracks and rolled away. There is no doubt the shelving is a Trade Fixture and may be taken by UTSG.

[14] As to the remaining Equipment, I am of the view that employing the common law test regarding Fixtures/Trade Fixtures, the Equipment would be classified as Trade Fixtures and thus available to UTSG to remove from the Premises.

[15] However, HCC makes the case that it is not the common law test that is operative in this instance. The interpretation of Fixtures/Trade Fixtures is governed by clause 7(r) which clearly favours HCC in this debate.

[16] UTSG complains that clause 7(r) was a significant departure from the 2019 lease and that the landlord did not bring it to UTSG's attention. Respectfully, I am not sure there is an obligation on HCC to bring a specific clause in the Lease to UTSG's attention. UTSG's obligation was to read the Lease carefully.

[17] UTSG also complains that HCC may not have even intended to have such a significant clause in its favour. It makes the case that the clause has been lifted from a precedent available to many counsel who were in attendance at a Continuing Legal Education seminar.

[18] Whatever the provenance, the reality is that it is clause 7(r) which governs the debate on Fixtures/Trade Fixtures between the parties.

[19] In my view, clause 7(r) is conceptually exhaustive of the type of Trade Fixtures employed by UTSG in the Premises. In short, clause 7(r) deemed as between the two parties, the Equipment will not be characterized as Trade Fixtures.

[20] Accordingly, I conclude, notwithstanding UTSG's excellent arguments to the contrary, that the Equipment must remain with the Premises under the ownership of HCC, with the exception of the shelving.

c. Compliance with Consent Order

[21] As noted, the parties agreed to a consent order in March 2026. The consent order provided:

THE COURT ORDERS THAT:

1. the Respondent to remove all of its assets, chattels, fixtures,

equipment, materials, waste, and debris from the property legally known as Surface Parcel #149941952, Blk Par A, Plan No. 101425913 Ext. 0 (the “Premises”);

2. the Respondent to remove all worthless assets, waste materials, chemicals, debris, and damaged equipment from the Premises prior to removing any valuable equipment or assets, in the order to be specified by the Landlord, specifically that hazardous materials, cannabis waste materials, hazardous material containers, and waste in general either inside or outside the premises must be removed first, followed by worthless materials and waste material, and finally equipment, but excluding any electrical equipment, switches, wiring, HVAC, or any other electrical fixtures attached to or service the building, or any Leaseholds or Equipment determined to be property of the Landlord;

3. the Respondent to remove the concrete foundations installed for the c-cans and to restore the ground underneath to its original condition;

4. the Respondent to tender security in the amount of \$20,000.00 to secure potential damage to the building during the removal of equipment requiring wall removal and any concrete forms poured on the premises that must be removed;

5. The issue of ownership of leaseholds or equipment as disputed between the parties shall be adjourned to March 24, 2026; and

6. Costs of this application to be in the cause in this action.

[22] Starting at paragraph 31 of its brief, HCC gives an “over the forest” perspective of the debate respecting compliance with the support order:

31. The parties have had significant discussions on this topic, but ultimately came to a standstill over two points:

a. The Keep Rite Chiller:

i. HCC has maintained that the Keep Rite Chiller is a leasehold improvement or equipment owned by HCC pursuant to the Final Lease and does not consent to its removal.

- ii. UTSG has taken the position it is a trade fixture that is not equipment belonging to HCC pursuant to the Final Lease.
- b. Environmental Cleanup:
 - i. HCC has maintained that environmental contamination (including cannabis waste) would need to be removed prior to cleanup. It takes the position that this is clearly set out in the Consent Order.
 - ii. UTSG has taken the position that the Consent Order does not require environmental remediation, and it has satisfied the removal of cannabis waste, hazardous materials, and waste.
- 32. HCC has always maintained the position that all equipment on the Property belongs to it pursuant to the Final Lease and that all cannabis waste and environmental contamination were conditions of cleanup pursuant to the Order, before equipment could be removed.
- 33. HCC was not aware, until the eviction of UTSG, that cannabis waste was being disposed of on the Property. This was not done properly, or with the consent of the Landlord, nor was it permitted under the Final Lease.
- 34. Concerns remain with the compliance of the Consent Order by UTSG, specifically:
 - a. Cannabis waste – cannabis has been improperly disposed of, without the consent of HCC on the Property. There is cannabis waste strewn about the Property.
 - b. Environmental contamination – HCC had a full three-phase environmental assessment completed just prior to UTSG taking possession of the Property in 2019. Testing completed upon UTSG vacating the Property shows significant environmental contamination.
- 35. HCC has acted reasonably and clearly delineated expectations for cleanup. UTSG has refused to do so.

[23] HCC has also complained that some of the plant material has the active ingredient THC present in the plant. Respectfully, I do not think HCC can be absolutist on this. The context must be remembered. HCC leased the premises to a significant operation which cultivated cannabis and then processed it. It was a large undertaking, with gross revenues between \$4 million and \$7 million a year. There were thousands of plants involved every year.

[24] HCC cannot be shocked that there is plant material on the Premises. As to the THC level, the question is always: is the level of THC in the plant material at a safe level? The approach must be reasonable. I am reminded of the adage:

You can't join the circus and then complain about the clowns.

[25] During arguments, the parties allowed that they are likely able to settle between themselves compliance with the consent order. Let us hope this is the case.

[26] However, I will remain seized of that debate, and in the event there is a breakdown between the parties, either one can apply to me with a notice of application on five days' notice setting out the relief they seek.

Costs

[27] HCC will have costs against UTSG in the amount of \$2,000.00. Such costs are payable by June 30, 2026.

"R.S. Smith"

J.
R.S. SMITH