

DISTINCTIVE TREE CARE LLC
V.
TOWN OF SOUTH WINDSOR BOARD OF
ASSESSMENT APPEALS Et Al

SUPERIOR COURT

JUDICIAL DISTRICT OF NEW BRITAIN
AT NEW BRITAIN

4/25/2025

ORDER

ORDER REGARDING:
08/08/2024 106.00 MOTION FOR SUMMARY JUDGMENT

The foregoing, having been heard by the Court, is hereby:

ORDER: GRANTED

The plaintiff, Distinctive Tree Care LLC (Distinctive Tree), and the defendant, the Town of South Windsor, cross move for summary judgment on the complaint of Distinctive Tree. Distinctive Tree sought a manufacturing equipment exemption under General Statutes § 12-81(72) and (76). South Windsor denied the exemption and Distinctive Tree appeals. The court grants summary judgment in favor of South Windsor. The court denies Distinctive Tree's motion for summary judgment.

The material facts of this case are not in dispute. Distinctive Tree is a tree clearing business. Distinctive Tree uses heavy clearing equipment known as "Sennebogens" and "Albachs" to cut, chip and otherwise process large trees and vegetation along highways and at other construction/job sites where large trees need to be cleared and processed. Sennebogens and Albachs are multi-ton machines that generally must be transported to a given job site, but may be secured to a specific spot on the job site through outrigger or stabilizing mechanisms. There is no dispute between the parties that the Sennebogens and Albachs used by Distinctive Tree are, generally, heavy pieces of equipment akin to large bulldozers or backhoes.

The parties' dispute centers on § 12-81(72)'s and (76)'s requirement that exempt machinery be "installed in a manufacturing facility." "Manufacturing facility" is defined in § 12-81(72) as "that portion of a plant, building, or other real property improvement" that is used for manufacturing. (For clarity, the court holds that the processing of trees and vegetation into wood chips meets the definition of "manufacturing" under § 12-81(72) and that the Sennebogens and Albachs used by Distinctive Tree meet the definition of "equipment" under § 12-81(72).) It is undisputed that the Sennebogens and Albachs are transported from job site to job site as necessary. They are not stationary pieces of equipment affixed to a single spot, or fixtures affixed to a specific piece of real property. See *Wind Colebrook S., LLC v. Town of Colebrook*, 344 Conn. 150, 171, 278 A.3d 442, 455 (2022) ("A fixture is 'a piece of personal property [that] has become so connected to realty ... as to have lost its character as personality'"). Distinctive Tree also concedes that its equipment is not installed in a "plant" or "building." Distinctive Tree nevertheless argues that its machinery is installed in an "other real property improvement" because the "removal of trees to clear a patch of land for development, or along side a road to ensure ... drivers are not subject to falling trees" is an "alteration for a particular purpose" and thus an improvement under § 12-81(72). See Docket Entry 108.00, at 5 and citing to *Grigerik v. Sharpe*, 247 Conn. 293, 306, 721 A.2d 526, 534 (1998).

The court is not convinced. "In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly...." The phrase 'improvement to real property' is a phrase that has acquired a particular meaning in the law. Without attempting to define the phrase in all its possible nuances and applications, we have little difficulty in concluding that an 'improvement to real property,' as commonly understood

in the law, ‘generally has reference to buildings, but may also include any permanent structure or other development of the real property in question.’” Grigerik, *supra*, 247 Conn. at 306–07. This court holds that the plain meaning of “other real property improvement” in § 12-81(72) refers to, at a minimum, some physical structure added to and attached to the realty. Distinctive Tree’s proffered statutory interpretation - the “removal of trees to clear a patch of land for development, or along side a road....” - does not refer to any physical thing, i.e., a noun. Instead, it refers to a process, or action. The court holds that Distinctive Tree’s equipment does not meet the definition of “installed in a manufacturing facility” because the subject equipment moves from job site to job site and thus is not “installed” anywhere for the purposes of § 12-81(72). Additionally, even if the court could construe the equipment to be (temporarily) “installed” at a given job site, such equipment is not installed in any plant, building, or other physical structure attached to the realty.

The court holds that the material facts are not in dispute and that the Town of South Windsor is entitled to judgment as a matter of law because there is no material factual dispute that Distinctive Tree’s tree clearing equipment is not “installed in a manufacturing facility” as required by General Statutes § 12-81 (72) and (76).

Judgment shall enter in favor of the defendant.

Judicial Notice (JDNO) was sent regarding this order.

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Judge: MATTHEW JOSEPH BUDZIK
Processed by: Anastasia Jordanopoulos

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