A man's home was mortgaged to a bank by a duly recorded purchase-money mortgage. Last year, the man replaced all of the home's old windows with new windows.

Each new window consists of a window frame with three inserts: regular windows, storm windows, and screens. The windows are designed so that each insert can be easily inserted or removed from the window frame without tools to adjust to seasonal change and to facilitate the cleaning of the inserts.

The new windows were expensive. The man purchased them on credit, signed a financing statement, and granted a security interest in the windows to the supplier of the windows. The supplier promptly and properly filed and recorded the financing statement before the windows were installed. The man stored the old windows in the basement of the home.

This year, the man has suffered severe financial reverses and has defaulted on his mortgage obligation to the bank and on his obligation to the supplier.

The bank brought an appropriate action to enjoin the supplier from its proposed repossession of the window inserts.

In the action, for whom should the court rule?

A. The bank, because its mortgage was recorded first.

B. The bank, because windows and screens, no matter their characteristics, are an integral part of a house.

C. The supplier, because the availability of the old windows enables the bank to return the home to its original condition.

D. The supplier, because the inserts are removable.

Explanation:

A **mortgage** is a lien against real property that is used to secure repayment of a debt. This gives the recipient of the mortgage (ie, the mortgagee) a **legal interest in** the **mortgaged property** and any **fixtures** later added to that property. A fixture is an object (ie, personal property) that is:

attached to real property with the intent that it remain attached *and*

used for some **larger component** (eg, lighting, water drainage) or **function** (eg, plumbing, septic) of the real property.

In other words, a fixture is an object that is so attached to real property that it is essentially a part of that property.

Here, the new window inserts were integral as a larger component of the man's house. But they are *not* fixtures because they are easily removable and therefore not attached to the house. As a result, the window inserts are not part of the bank's purchase-money mortgage. This means that the bank has no standing to enjoin (ie, stop) the supplier from repossessing them **(Choice B)**.

(Choice A) A first recorded lien generally has priority over subsequent liens on the *same* property, and a purchase-money mortgage (recorded or not) generally has priority over all other liens on the property. But here, priority is irrelevant since the bank and the supplier have mortgages over *different* property—the home and new windows, respectively.

(Choice C) Since the window inserts are easily removable, they would *not* be fixtures even if the old windows were unavailable and the bank could not return the home to its original condition.

Educational objective:

A mortgage includes the property and any fixtures added to that property before or after the mortgage was created. A fixture is an item that is (1) attached to property with the intent that it remain attached and (2) used for a larger component or function of the property.

References

35A Am. Jur. 2d Fixtures § 1 (2019) (defining fixture).

Fixture v. Chattel