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Agricultural Law Digest

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sheeting to allow air to flow through the barn to dry and cure tobacco. The evidence at trial was conflicting as to the ease with which the barns could be moved, although the debtor testified that the debtor intended to move the barns if the debtor ever stopped growing tobacco. Both barns were destroyed by a windstorm. The debtor received insurance proceeds for the casualty loss which were made payable to the mortgagee bank and the operating loan bank. A third creditor obtained a judgment on a loan on which the debtor defaulted. All three creditors argued that the loan proceeds were subject to their security interests. The mortgagee bank argued that the barns were fixtures and part of the real property subject to the mortgage and the operating loan bank argued that the barns were personal property farm equipment. The court stated that the test for determining whether something was a fixture required analysis as to whether the item was (1) annexed, either actually or constructively, to the property; (2) adapted to the use/purpose of the property to which it is connected so as to materially affect its use; and (3) intentionally made a permanent part of the property to which it was annexed. The court held that the barns were fixtures and subject to the mortgage as real property because (1) the barns were attached to the property by concrete foundations, (2) the barns contributed to value and operation of the property as a farm, and (3) the debtor indicated that the barns were real property by listing them under real property in the insurance policy. In re Smith, 2017 Bankr. LEXIS 4152 (Bankr. W.D. Ky. 2017).

**IN THE NEWS**

**GOVERNMENT SHUTDOWN.** The Office of the Federal Register (OFR) has announced that, in the event of an appropriations lapse, the OFR would be required to publish documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property. The OFR stated that, since it would be impracticable for the OFR to make case-by-case determinations as to whether certain documents are directly related to activities that qualify for an exemption under the Antideficiency Act, the OFR will place responsibility on agencies submitting documents to certify that their documents relate to emergency activities authorized under the Act. 82 Fed. Reg. 58028 (Dec. 8, 2017).
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