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RBS PARTNER, SCOTT MACDONALD, WINS IMPORTANT COMMERCIAL LEASING CASE

Two important legal issues, arising at the end of a commercial tenancy, were recently addressed by the BC Supreme Court in *Van-Air Holdings Ltd. v. Delta Charters (1982) Inc.*, 2013 BCSC 1322. Scott MacDonald acted as legal counsel for a tenant who operated a marina business under a long term lease which expired in January 2009. The tenant overheld with the landlord's consent, and continued to pay rent until July 2011, at which time the landlord gave one months' notice to the tenant to vacate the marina by the end of August 2011. The tenant objected to the short notice and also claimed the right to remove the docks and pilings which the tenant had rebuilt and expanded at significant expense in 2001.

The court found in favour of the tenant on the two key issues:

1. A tenant's over-holding upon expiry of a lease of a term for years, and the landlord's acceptance of rent, creates a year to year tenancy. This common law rule can be modified by the terms of the original lease or by subsequent agreement of the parties. The common law requires six months' notice of termination of a year to year tenancy, effective at the end of a tenancy year.
2. The docks and pilings were trade fixtures because they were installed in the marina by the tenant to use for the purpose of operating its marina business. The pilings were driven into the river bed and the docks were attached to the pilings in a manner which allowed them to be removed for dredging purposes, and then reinstalled once the dredging was completed. There is a presumption in law that articles attached to the land even slightly are to be considered part of the land. Although these docks and pilings became fixtures and could not be removed during the term of the lease, the tenant had a right to convert them back into chattels and to remove them upon termination of the lease.

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To view the full case on CANLII, [click here](#).

