


1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: \_\_\_\_\_

Court of Appeals of New Mexico  
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4 **No. A-1-CA-36212**



Mark Reynolds

5 **GIANT CAB, INCORPORATED,**

6           Plaintiff-Appellee,

7 **v.**

8 **CT TOWING, INC.,**

9           Defendant-Appellant.

10 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

11 **Alan M. Malott, District Judge**

12 Whitener Law Firm, P.A.

13 Thomas M. Allison

14 Albuquerque, NM

15 for Appellee

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17 and Business Advocates, LLP

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21 Andrew G. Thornton

22 Albuquerque, NM

23 for Appellant

1 **OPINION**

2 **ATTREP, Judge.**

3 {1} Defendant CT Towing, Inc. appeals a district court judgment awarding  
4 Plaintiff Giant Cab Incorporated compensatory damages and costs for CT Towing's  
5 failure to allow Giant Cab to remove certain attached equipment from an accident-  
6 damaged taxicab CT Towing had lawfully towed and stored on its lot. CT Towing  
7 contends the district court erred in concluding (1) the items were not subject to the  
8 lien it lawfully held on the taxicab under NMSA 1978, Section 48-3-19 (1967), and  
9 (2) Giant Cab satisfactorily established its ownership of the items as required by  
10 18.3.12.24(B)(1)(c) NMAC (2/13/2015). We conclude the district court correctly  
11 interpreted the relevant statutory and regulatory provisions and substantial evidence  
12 supported the district court's finding that Giant Cab provided proof of ownership.  
13 We affirm.

14 **BACKGROUND**

15 {2} We draw the facts from the testimony presented at the bench trial. At the  
16 direction of law enforcement, CT Towing towed a damaged taxicab from the scene  
17 of an accident to its storage lot. Robert Torch, the owner of Giant Cab, went to the  
18 storage lot the following morning to check on the condition of the vehicle and to  
19 retrieve certain items. Torch presented Martha Stanke, co-owner of CT Towing, his  
20 identification and asked to examine the vehicle and to retrieve the registration and

1 other personal items. Torch was permitted onto the lot, where he retrieved the  
2 registration and observed that the vehicle was likely inoperable. He returned to the  
3 front office and showed Stanke the registration that had been stored in the vehicle.  
4 Stanke presented him with an invoice for the towing charges, which he signed. Based  
5 on standard CT Towing practice, his signature on the invoice indicated he had shown  
6 proof of ownership for the cab.

7 {3} Torch then asked Stanke for permission to return to the vehicle to remove the  
8 taxicab's fare meter, the dome light painted with his company name and telephone  
9 number, and the relay, which operated the dome light, as he could still make use of  
10 those items. He explained to Stanke that removal would be straightforward, need not  
11 damage the vehicle, and could be accomplished in approximately fifteen minutes.  
12 Torch had installed the fare meter and the dome light himself in customizing and  
13 painting the cab after purchasing it, as was his general practice.

14 {4} Stanke denied Torch's request, citing insurance concerns.<sup>1</sup> She later testified  
15 that the registration Torch retrieved from the vehicle appeared to be for a different  
16 vehicle and she had asked him to return with the correct registration. Regardless,  
17 instead of granting Torch's request to return to the vehicle, Stanke offered him an  
18 alternative—he could pay CT Towing's towing and storage fee, they would tow the

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<sup>1</sup>CT Towing has not advanced on appeal any insurance-related justification for refusing Torch's request.

1 vehicle off the lot, and he could retake possession of the vehicle and the items he  
2 sought.

3 {5} That alternative was unacceptable to Torch and he left the lot. A few days  
4 later, Torch filed an action in district court, alleging claims of conversion and prima  
5 facie tort based on CT Towing's refusal to let him remove the items. The district  
6 court later held a one-day bench trial. Based on the evidence presented, the district  
7 court concluded Torch should have been allowed to remove the dome light, fare  
8 meter, and relay because the items constituted personal property under  
9 18.3.12.24(B)(1)(c) NMAC (2/13/2015), which the parties agreed was exempt from  
10 the tow company lien under Section 48-3-19. The court awarded Torch  
11 compensatory damages and costs. CT Towing appealed.

## 12 **DISCUSSION**

### 13 **I. Standard of Review**

14 {6} We review the district court's findings of fact for substantial evidence. *See*  
15 *Williams v. Mann*, 2017-NMCA-012, ¶ 25, 388 P.3d 295. We review de novo the  
16 district court's application of law to the facts. *See TPL, Inc. v. N.M. Taxation &*  
17 *Revenue Dep't*, 2003-NMSC-007, ¶ 10, 133 N.M. 447, 64 P.3d 474. We also review  
18 the district court's interpretation of the statutory and regulatory language de novo.  
19 *See Truong v. Allstate Ins. Co.*, 2010-NMSC-009, ¶¶ 22, 24, 147 N.M. 583, 227 P.3d  
20 73.

1 {7} We aim to give effect to the Legislature’s intent in construing statutory  
2 provisions. *See Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 13, 121 N.M.  
3 764, 918 P.2d 350. We are aided by classic canons of statutory construction in  
4 discerning intent, and we look first to plain meaning. *See Marbob Energy Corp. v.*  
5 *N.M. Oil Conservation Comm’n*, 2009-NMSC-013, ¶ 9, 146 N.M. 24, 206 P.3d 135.  
6 We read provisions in their entirety and construe them in relation with all others so  
7 as to produce a harmonious whole. *See Key*, 1996-NMSC-038, ¶ 14. “In interpreting  
8 sections of the Administrative Code, we apply the same rules as used in statutory  
9 interpretation.” *All. Health of Santa Teresa, Inc. v. Nat’l Presto Indus.*, 2007-  
10 NMCA-157, ¶ 18, 143 N.M. 133, 173 P.3d 55.

11 **II. The District Court Did Not Err in Concluding CT Towing’s Lien on the**  
12 **Taxicab Did Not Extend to the Identified Items**

13 {8} In its interpretation of the relevant statutory and regulatory language, the  
14 district court determined that the taxi equipment was not a “fixture.” CT Towing  
15 contends the district court erred in interpreting the word “fixture” and as a result  
16 erred in concluding CT Towing’s lien on the vehicle did not extend to the fare meter,  
17 dome lamp, and relay.

18 {9} Neither the statutory language nor the regulatory language identified by the  
19 parties, however, makes any reference to fixtures. Section 48-3-19 grants a lien on  
20 “automobiles” towed or stored, at the direction of a person lawfully in possession,  
21 for the reasonable value of those services. NMSA 1978, Section 48-3-21 (1965)

1 establishes that an “automobile” for purposes of Section 48-3-19 includes “motor  
2 vehicles of all classes and kinds[,]” and that a “motor vehicle” is any “self-propelled  
3 device in, upon or by which, any person or property is, or may be, transported.”  
4 Section 48-3-21. The pertinent regulation sets forth procedures by which automobile  
5 owners may retake possession of automobiles subject to towing and storage liens.  
6 The regulation establishes that an owner may obtain possession of a vehicle not held  
7 for further law enforcement investigation by paying certain reasonable charges and  
8 providing proof of ownership. *See* 18.3.12.24(B)(2) NMAC (2/13/2015). Even in  
9 the absence of payment to retake possession, the regulation also permits an owner  
10 or agent, without charge, to “remove personal property from the motor vehicle if he  
11 or she presents proof of ownership.” 18.3.12.24(B)(1)(c) NMAC (2/13/2015).

12 {10} The statutory provision at issue here, Section 48-3-19, makes reference only  
13 to “automobiles” and does not tell us explicitly whether Torch’s equipment might  
14 have merged with the automobile. *See id.* The statutory definition of “motor  
15 vehicle,” incorporated in the statutory definition of automobile, provides no more  
16 guidance. *See* § 48-3-21. Other related statutory provisions shed more light on the  
17 question.

18 {11} Section 48-3-19 sets forth just one of many legislatively created liens on  
19 personal property—Article 3 of Chapter 48 houses a variety of others, including  
20 mechanics’ liens, landlord’s liens, and common carriers’ liens. *See, e.g.,* NMSA

1 1978, §§ 48-3-1 (1977), 48-3-5 (1997), 48-3-8 (1923). Some of these other liens,  
2 under appropriate circumstances, may apply to vehicles much like the tow  
3 company's lien does here. See §§ 48-3-1, -5, -8. But notably, in establishing the  
4 scope of these other liens, our Legislature has seen fit to specify that the liens may  
5 also extend to "parts" of these vehicles, depending on the nature of the services  
6 provided. See, e.g., § 48-3-1(A) (specifying mechanics "who repair[] any motor  
7 vehicle or furnish[] parts therefor . . . shall have a lien upon such motor vehicle or  
8 any part or parts thereof"); NMSA 1978, § 48-3-29(A) (1985) (specifying aircraft  
9 maintenance facility that "stores, maintains or repairs any aircraft accessories or  
10 furnishes materials for an aircraft . . . shall have a lien upon the aircraft or any part  
11 thereof"). No such specification appears in Section 48-3-19. The omission signals  
12 the Legislature's intent that, given the more limited nature of the services tow  
13 companies provide, the liens granted to tow companies are less expansive than those  
14 applicable to mechanics or common carriers and do not extend to equipment like  
15 that at issue here. See, e.g., *United Rentals Nw., Inc. v. Yearout Mech., Inc.*, 2010-  
16 NMSC-030, ¶ 25, 148 N.M. 426, 237 P.3d 728 ("[I]f a statute on a particular subject  
17 omits a particular provision, inclusion of that provision in another related statute  
18 indicates an intent that the provision is not applicable to the statute from which it  
19 was omitted." (alteration, internal quotation marks, and citation omitted)). Had the  
20 Legislature intended the tow company's lien to extend not just vehicles but vehicle

1 parts, it could have demonstrated the intent by including more specific language. *See*  
2 *City of Eunice v. N.M. Taxation & Revenue Dep't*, 2014-NMCA-085, ¶ 19, 331 P.3d  
3 986 (“[The Legislature] could readily have demonstrated such an intent by including  
4 language to that effect.”). But no such language is included, and we decline to read  
5 it into the statute.

6 {12} Mindful of the principle that a regulation may not impose requirements  
7 inconsistent with those established by statute, we recognize the regulation’s potential  
8 distinction between “personal property” and “vehicle” may be confusing given that  
9 the vehicle itself is personal property and the tow company’s lien clearly extends to  
10 the vehicle. *See Albuquerque Cab Co. v. N.M. Pub. Regulation Comm’n*, 2014-  
11 NMSC-004, ¶ 14, 317 P.3d 837 (explaining agency “may not by regulation impose  
12 requirements that are greater than, and inconsistent with, those set forth by” statute);  
13 *Hubbard v. Albuquerque Truck Ctr., Ltd.*, 1998-NMCA-058, ¶ 17, 125 N.M. 153,  
14 958 P.2d 111 (noting vehicle damage is personal property damage). But the  
15 regulation’s use of the word “remove” helps clear up any confusion and aids our  
16 examination of the scope of the lien here. To “remove” something is commonly  
17 defined as “to move” it “by lifting, pushing aside, or taking away or off.” *Merriam-*  
18 *Webster Dictionary*, <https://www.merriam-webster.com/dictionary/remove> (last  
19 visited on Aug. 13, 2019). That definition (or concept) contemplates what Torch  
20 proposed to do here, which was to retake possession of his taxi equipment after



1 detaching it from the vehicle without causing damage to the vehicle itself or  
2 diminishing its value. Use of “remove” thus suggests the regulation contemplates,  
3 with no apparent inconsistency with the statutory language, that owners may retake  
4 possession of a variety of items that do not make up the vehicle as “personal  
5 property,” including attached equipment like Torch’s, even without retaking  
6 possession of the vehicle itself.

7 {13} New Mexico’s longstanding law of real property and fixtures, though not  
8 perfectly analogous given the personal property at issue here, bolsters the conclusion  
9 CT Towing’s lien did not extend to the taxi equipment. Our appellate courts have  
10 often observed that statutory provisions are enacted against a background of  
11 common law principles, and unless “clearly abrogated,” we presume those principles  
12 to be consistent with the new legislation. *Sims v. Sims*, 1996-NMSC-078, ¶ 24, 122  
13 N.M. 618, 930 P.2d 153. In applying common law principles to determine whether  
14 an article or item is a “fixture” to be treated as part of a piece of real property, our  
15 courts generally look to considerations of the intent of the party making the  
16 installation, the article’s adaptation to the use of the property, and the article’s  
17 “annexation” to the property. *Boone v. Smith*, 1968-NMSC-172, ¶ 5, 79 N.M. 614,  
18 447 P.2d 23. Intent is generally “the chief test and must affirmatively and plainly  
19 appear.” *Id.* ¶ 8; *see also Sw. Pub. Serv. Co. v. Chaves Cty.*, 1973-NMSC-064, ¶ 15,  
20 85 N.M. 313, 512 P.2d 73 (“Thus our inquiry, though not disregarding annexation

1 or adaptation, must center upon [the installing party's] intentions in installing and  
2 maintaining the components of steam production in their present location.”).

3 {14} Application of that principle here is instructive because there was no evidence  
4 that Torch intended, or that any other party understood, that his equipment would  
5 merge with the vehicle for purposes of the lien or otherwise. Torch testified that the  
6 equipment was freely transferrable, and that he had in fact recently transferred the  
7 same sort of equipment from another wrecked vehicle to a new one. *See Sw. Pub.*  
8 *Serv. Co.*, 1973-NMSC-064, ¶ 30 (“The equipment was readily portable and was  
9 frequently moved about for one reason or another.”). The parties agreed the  
10 equipment was in fact removable without any diminution in value of the vehicle. *Cf.*  
11 *Mitchell v. Lovato*, 1982-NMSC-018, ¶ 21, 97 N.M. 425, 640 P.2d 925 (affirming  
12 the district court’s conclusion that items had merged with realty and noting  
13 “defacement and injury to certain floors and walls, caused by removal of these  
14 items”). There was, moreover, no evidence CT Towing relied in any way on any  
15 indication of permanency, and no evidence of any “objective manifestations”  
16 indicating permanency. *See Kerman v. Swafford*, 1984-NMCA-030, ¶ 18, 101 N.M.  
17 241, 680 P.2d 622. Examination of our real property principles thus suggests Torch’s  
18 equipment was distinct from the vehicle and informs our interpretation of the  
19 relevant statutory and regulatory language. *See Sims*, 1996-NMSC-078, ¶ 24  
20 (observing statutory provisions are enacted against background of common law and

1 where “no aspect of the background of law is clearly abrogated, it is presumed to be  
2 consistent with . . . new legislation”).

3 {15} Application of the law of trade fixtures, though likewise imperfectly  
4 analogous, points toward the same conclusion. A “trade fixture” is generally defined  
5 as “[r]emovable personal property that a tenant attaches to leased land for business  
6 purposes[.]” *Trade Fixture, Black’s Law Dictionary* (10th ed. 2014). New Mexico  
7 courts have long recognized the existence of trade fixtures. *See Porter Lumber Co.*  
8 *v. Wade*, 1934-NMSC-042, ¶ 13, 38 N.M. 333, 32 P.2d 819 (noting general rule that  
9 tenant is permitted to remove trade fixtures at expiration of tenancy). In *Wade*, our  
10 Supreme Court examined whether bowling alleys constructed on a premises had  
11 become part of the underlying realty. *Id.* ¶ 12. *Wade* concluded they had not,  
12 explaining the bowling alleys were trade fixtures because they “did not constitute an  
13 integral part of the realty and [were] to be used for a specific trade purpose only.”  
14 *Id.* These trade fixtures principles, much like the more general property principles  
15 noted above, also inform our statutory and regulatory interpretation in the absence  
16 of any legislative signal of abrogation. *See Sims*, 1996-NMSC-078, ¶ 24.  
17 Examination of these principles suggests again Torch’s equipment had not merged  
18 with the vehicle itself, because the parties appeared to agree the equipment was not  
19 an integral part of the vehicle, and it was undisputed that the equipment was to be  
20 used specifically for the cab company. *See id.*

1 {16} Given the statutory and regulatory language identified, the omission of more  
2 specific language the Legislature used in other statutory provisions, the guidance we  
3 find in other strands of property law, and the record the parties made, we cannot  
4 conclude the district erred in determining the lien imposed by Section 48-3-19 did  
5 not extend to the equipment Torch sought to remove here.

6 **III. The District Court’s Determination That Torch Presented Adequate**  
7 **Proof of Ownership Was Supported by Substantial Evidence**

8 {17} CT Towing adds a contention that 18.3.12.24(B)(1)(c) NMAC (2/13/2015)  
9 required Torch to show proof of ownership of the vehicle before he was permitted  
10 to remove his equipment, and the district court erred in determining he had met that  
11 requirement. In reviewing this determination for substantial evidence, we ask  
12 whether the record featured relevant evidence a reasonable mind could accept as  
13 adequate to support the finding. *See Clovis Nat’l Bank v. Harmon*, 1984-NMSC-  
14 119, ¶ 7, 102 N.M. 166, 692 P.2d 1315. “[W]e resolve all disputed facts in favor of  
15 the [prevailing] party, indulge all reasonable inferences in support of [the judgment],  
16 and disregard all evidence and inferences to the contrary.” *Id.*

17 {18} The applicable regulation defines “proof of ownership” for purposes of the  
18 regulation here as “a certificate of title, evidence of current registration of a motor  
19 vehicle or other legal documentation of ownership[.]” 18.3.12.7(D) NMAC  
20 (2/13/2015). Given that standard, various evidence supported a determination that  
21 Torch established his ownership. Torch showed CT Towing his driver’s license and

1 “additional information” upon his arrival. He recalled he had been permitted on  
2 arrival to go retrieve personal items, including a first aid kit, from the cab. He added  
3 that he thought he had at some point presented “[t]he ownership and registration and  
4 the title.” Regardless which specific documents he had presented, he recalled  
5 showing Stanke documentation establishing he was the owner. Another co-owner of  
6 CT Towing testified that Torch had presented a registration to a Giant Cab vehicle,  
7 though perhaps not the one at issue here, along with a driver’s license, and that Torch  
8 eventually signed CT Towing’s tow invoice, which typically indicated proof of  
9 ownership had been shown. Moreover, Stanke recalled that CT Towing has a  
10 practice of requiring proof of ownership and identification before allowing an owner  
11 to access a vehicle, and she recalled, in her deposition, requiring proof of ownership  
12 from Torch before she allowed him to do an initial inspection of the vehicle.

13 {19} That evidence was sufficient to allow a reasonable fact-finder to conclude  
14 Torch had shown proof of ownership as required by 18.3.12.24 NMAC (2/13/2015),  
15 and thus we conclude the district court did not err in determining Torch met the  
16 prerequisites for removal of his equipment.

17 **CONCLUSION**

18 {20} We affirm the district court’s judgment.

19 {21} **IT IS SO ORDERED.**

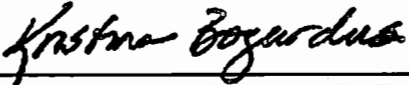
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\_\_\_\_\_  
JENNIFER L. ATTREP, Judge

1 **WE CONCUR:**

2 

3 **JULIE J. VARGAS, Judge**

4 

5 **KRISTINA BOGARDUS, Judge**