

Supreme court rules on retail tenant's service charge bill

Supreme court ruling: Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd

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The Supreme Court has ruled that whilst a landlord's service charge certificate was initially conclusive of the sums payable by a tenant, such wording did not ultimately preclude the tenant's right to dispute liability for such a payment.

In this Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd case, the tenant's service charge bill was nearly eight times higher than the previous year. The tenant argued that certain costs were not properly due under the terms of the lease.

The lease stated that the landlord's certificate of the total cost and sum payable by the tenant was conclusive (in the absence of manifest or mathematical error or fraud). The High Court originally decided that this meant that the landlord's certificate was conclusive as to the costs incurred in providing the services, but not as to whether the landlord was entitled to charge for such services in the first place. The Court of Appeal had since overturned that decision and ruled that the landlord's certificate was conclusive as to all elements which made up the "total cost" of the tenant's bill.

The Supreme Court came to a compromise between the decisions of the High Court and the Court of Appeal. The landlord could initially enforce by way of summary judgement the sums certified by the landlord, but this did not stop the tenant disputing its service charge bill at a later date. This was referred to as a "pay now, argue later" provision.

This case shows that a tenant should still be wary about agreeing a service charge provision which provides that a landlord's certificate as to the amount of service charge due is conclusive. However, if such a provision exists, the tenant is likely to be out of pocket initially as it would be required to pay the sum demanded first, but it would not prevent a tenant from disputing the landlord's determination.

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