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Correcting a mistake in an retail prices index rent review clause

A court will not alter an unambiguous contractual term merely because it is unduly favourable to one party, imprudent or unreasonable or because it provides for one party to pay too high a price for something. However, a court can correct the literal meaning of a contractual provision by construction if it is clear both that a mistake has been made and what the provision was intended to say.

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Property disputes analysis: A court will not alter an unambiguous contractual term merely because it is unduly favourable to one party, imprudent or unreasonable or because it provides for one party to pay too high a price for something. However, a court can correct the literal meaning of a contractual provision by construction if it is clear both that a mistake has been made and what the provision was intended to say.

Monosolar IQ Ltd v Woden Park Ltd

This case concerned a rent review clause which, read literally, would cause the rent to be increased each year by an amount reflecting the cumulative change in the Retail Prices Index (RPI) since the start of the lease (rather than by an amount reflecting the change in the RPI from the previous year). Using one set of figures provided by the tenant, this would mean that an initial annual rent of £15,000 would increase to just over £76m by year 25 of the lease.

Nugee LJ had no doubt that a literal interpretation produced results which could be described as arbitrary, irrational, commercially nonsensical or absurd. On that basis, the Court of Appeal decided that the rent review clause contained a clear drafting error which it felt able to correct by construction.

What are the practical implications of this case?

During the case, the court was shown extracts from two publications warning against the exact mistake that was made here. If a similar mistake is made, the unfortunate tenant will inevitably have to ask the landlord to correct the error in a deed of variation when it comes to light. A landlord in turn may look to hold its tenant to ransom and seek a high price for correcting the error. This case will improve the tenant's negotiating position in those circumstances and may even persuade a landlord simply to agree to the tenant's request (if the tenant pays its costs) on the basis that if the landlord does not agree, a court will come to the tenant's aid in any event.

Having said that, it is clearly preferable to prevent the mistake happening in the first place. This case is therefore a reminder of how careful you need to be where a commercial contract contains a mathematical formula for calculating payments and costs. It is a sensible precaution for such a formula to be double-checked by a colleague to ensure that it operates as the parties intended. Where the formula is particularly complex, worked examples within the body of the document should also be considered.

From a landlord's perspective, this case also shows that if a landlord intends an RPI rent review to be upwards only, it should say so expressly.

What was the background?

The tenant held a lease for 25 years and 6 months from 8 July 2013 for use as a solar farm (with a rolling right to break on 6 months' notice). The lease was originally granted to a single purpose vehicle incorporated by the landlord, but the tenant was now owned by a third party (the landlord had sold the project development rights as a package).

The lease provided that the annual rent would be reviewed each year by taking as a starting-point the previous year's rent, multiplying that figure by the RPI for May in the current year and then dividing that figure by the RPI for May 2013 (the year the lease was granted).

Both parties accepted that, read literally, this meant that, on the first anniversary of the lease, the rent would be increased by the RPI increase over the first year of the term. However, on the second anniversary, the revised rent would be increased again by the aggregate RPI increase over the first and second years of the term and, on the third anniversary, that further revised rent would be further increased by the aggregate RPI increase over the first, second and third years of the term - and so on.

The tenant argued that the rent review clause should be construed so that the rent was indexed each year in line with RPI. The basis of the tenant's argument was what Nugee LJ referred to as "the Chartbrook principle" (deriving from the 2009 House of Lords case of Chartbrook Ltd v Persimmon Homes Ltd). This principle allows a court to correct clear mistakes in the drafting of documents as a matter of construction.

What did the court decide?

Before it could correct the error, the Court of Appeal had to answer yes to two questions: (1) was it clear that the RPI rent review provision contained a drafting error; and (2) if so, was it clear how the error should be corrected.

Was it clear that the RPI rent review provision contained a drafting error?

This was not just a case of a rent review clause that was unduly favourable to one party or imprudent for the other party to enter into. Instead, it was a clear example of a clause which, read literally, would lead to arbitrary and irrational results in circumstances where it was perfectly possible for the concepts employed (the starting or passing rent, changes in the index etc.) to be employed in a wholly orthodox and rational way. Nugee LJ had no doubt that there was a drafting error in the way the rent review provision had been written.

Was it clear how the error should be corrected?

The landlord argued that it was not clear as it was possible that the parties intended an upwards only rent review.

Nugee LJ rejected this argument on the basis that including provision for an upwards only rent review would have nothing to do with correcting the mistake; it would be including a new provision and there was no basis for supposing that the parties intended to include such a provision.

There were two ways of correcting the mistake. One was to start each year with the original annual rent (£15,000), multiply that figure by the RPI for May in the current year and then divide that figure by the RPI for May 2013 (the year the lease was granted). The other was to start each year with the previous year's rent, multiply that figure by the RPI for May in the current year and then divide that figure by the RPI for May for the previous year.

As the rent review was not upwards only, both formulae produce the same results. For that reason, Nugee LJ saw no reason to interfere with Fancourt J's initial High Court decision to order the second alternative.

Case details

- Court: Court of Appeal, Civil Division
- Judge: Baker, Males and Nugee LJJ
- Date of judgment: 29/6/2021

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