

Does the tenant have any right to challenge a service charge where the landlord's Service Charge Certificate (SCC) is deemed to be "conclusive"?

This was the question that the high court faced in *Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd* [2020] EWHC 1263 (Ch)

Facts

Blacks, the outdoor clothing and leisure retailer, was the tenant under the lease. Blacks were obliged to pay a "fair and reasonable" proportion of the service charge.

The lease provided that the landlord would serve a SCC that would be conclusive in the absence of manifest or mathematical error or fraud. In addition, the lease contained a "no set-off provision," where Blacks covenanted not to claim any right to set off or counterclaim against the service charge due under the lease.

The present dispute arose as Blacks argued that the relevant SCC contained unnecessary works and repairs that did not fall in its repairing obligations.



Decision

The high court found that there was a clear distinction between the SCC establishing the amount of costs due, and the question of whether the particular costs should properly have been incurred in the first place.

As such, the landlord's SCC was conclusive as to the amount of costs incurred, in accordance with the provisions of the lease. However, it was not conclusive as to whether the costs, as a matter of principle, fell into the scope of the service charge payable under the lease.

As regards the no set-off or counterclaim provision, Blacks accepted that the provision did prevent it from withholding the service charge when due. However, Blacks argued that the provision was only engaged when the service charge was actually due under the lease. As this dispute would determine what was due, Blacks contested that they were entitled to withhold the service charge until determination.

The high court agreed with Blacks, holding that it was entitled to raise a challenge as to whether or not the service charge was properly due under the lease.

This case was brought by the landlord as an appeal against a summary judgement. As such, the substantive question of the recovery of items in the service charge will now progress to trial.

Practical Significance

Wording that, on the face of it, seeks to make a landlord's service charge certificates conclusive is common place within leases.

As such, this decision will be welcomed by tenants who are seeking to challenge service charges that have been raised by landlords, were such certificates are seemingly conclusive.

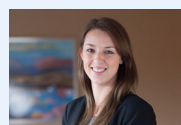
Should you require any assistance in respect of service charge provisions, or otherwise, please do not hesitate to contact our Real Estate Litigation team.

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