

A landlord's service charge certificate was conclusive as to the sums payable by a tenant under a lease

The Court of Appeal has ruled that the wording of a service charge clause precluded a tenant from challenging the sums claimed by a landlord.

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Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd [2020] EWCA Civ 1521 (13 November 2020)

The Court of Appeal has ruled that the wording of a service charge clause precluded a tenant from challenging the sums claimed by a landlord.

In this case, the tenant's service charge bill was nearly eight times higher than the previous year. The tenant argued that certain costs should not have been included in the service charge calculation.

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. However, the Court of Appeal has overturned this 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.

This case shows that what has up until this decision been accepted as normal commercial practice is now a cause for concern for tenants. Tenants should therefore push back on service charge provisions which provide that a landlord's certificate as to the amount of service charge due is conclusive. The tenant is likely to be left without a remedy if it disputes the landlord's determination.

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