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Scott Goldstein
Partner, Dispute Resolution

INSIGHT

Service charge challenge serves as a warning

By Scott Goldstein Mon 22 June 2020

The High Court has upheld a decision of a deputy master refusing to grant summary judgment for a landlord in a service charge dispute.

The case concerned two leases, which both contained commonly-found wording, providing that the service charge certificate was conclusive, in "the absence of manifest or mathematical error or fraud". Neither lease made express provision for an independent determination of whether the services comprising the service charge were properly claimed.

The landlord sued, arguing that under the terms of the leases, the certified service charge accounts were final and could not be challenged. However, the tenant challenged the charges, in particular querying the necessity of some of the works charged and whether they fell within the scope of the landlord's repairing obligations. It also asserted that the cost of some of the works had increased due to the landlord's previous failures to keep the premises in good repair.

The landlord's appeal was rejected by Kelyn Bacon QC (sitting as a deputy judge of the High Court), who found that the tenant could challenge which services were allocated as service charges, despite the certification provision in the lease. The court achieved this by construing the certification clause narrowly. The deputy judge differentiated between (i) the total costs incurred, and (ii) the question of whether the cost of those services fell within the scope of the tenant's service charge liability. On the construction of the leases, the service charge certificate was conclusive as to (i), absent manifest or mathematical error or fraud. However, it was not conclusive as to

(ii). This meant that the tenant could challenge whether it was obligated to pay the service charge demanded of it, even if it could not question the entire service charge bill.

This is a further reminder that specific attention is required in both lease drafting and interpretation as to the scope of the specific matters that will be “conclusive” by virtue of the landlord’s service charge certificate. It also demonstrates the court’s interest in considering and protecting the checks and balances on parties to a lease. More specifically, although each case turns on the wording of its own service charge provisions, and the judge made clear that for the purposes of the appeal it was not necessary to define exhaustively the circumstances in which a certificate would or might be conclusive, the wording in this lease is also found widely in commercial leases.

Therefore this case is a warning to landlords that without more, merely providing that service charge certificates are conclusive may not render service charge demands watertight. Landlords’ solicitors should consider whether to insist that lease provisions contain more precise wording, making clear which aspects of service charge certification the landlord intends to be conclusive.

Scott Goldstein is a partner at Payne Hicks Beach

10 New Square, Lincoln's Inn, London WC2A 3QG
DX 40 London/Chancery Lane
Tel: 020 7465 4300 Fax: 020 7465 4400 www.phb.co.uk