

# SERVICE CHARGE LIABILITY FOLLOWING THE SUPREME COURT DECISION IN SARA & HOSSEIN V BLACKS

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# DISPUTED SERVICE CHARGE PAYMENT BY TENANT AND "CONCLUSIVE" SERVICE CHARGE CERTIFICATE ISSUED BY LANDLORD

## SUMMARY

The Supreme Court has handed down its judgment in [Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd](#). In a nutshell, the tenant (Blacks) is responsible for paying the amount stated in the landlord's service charge certificate but can take further action disputing its underlying liability for the service charge payments. The landlord cannot rely on the "conclusive" wording in the service charge certificate and so is potentially embroiled in further litigation as to the underlying liability. The battle rumbles on.....

## CASE FACTS

The dispute, between Blacks and Sara & Hossein Asset Holdings Ltd (S&H), the landlord of premises in Whitechapel and Liverpool, concerned more than £400,000 in service charges levied in 2018 and 2019. Under the terms of the leases of the properties, S&H would provide an annual certificate setting out the service charge due and that sum would be "conclusive" unless there was "manifest or mathematical error or fraud". Blacks was responsible for paying a "fair and reasonable proportion" of the total service cost.

Blacks refused to pay the full amount, saying that the charge was excessive and included unnecessary items and expenses that were not properly due under the lease. S&H argued that its certificate was conclusive as to both the costs it incurred and the sum payable, saying Blacks had agreed to accept whatever was in the certificate unless there was mathematical error or fraud. Blacks argued that the certificate was conclusive only as to S&H's costs and not as to the sum payable by Blacks.

## PAY NOW, ARGUE LATER REGIME

The Supreme Court held that neither interpretation was correct; the correct interpretation was that S&H's certificate was conclusive as to the sum payable by Blacks following certification, but not as to Black's underlying liability for the service charge. This meant Blacks was not entitled to withhold payment of the sum. Instead, Blacks should pay the sum and then take further action in the High Court disputing its underlying liability for the service charge payments. This "pay now, argue later" approach ensures S&H obtains prompt payment of the service charge, but does not prevent Blacks from later disputing its liability to pay. The no set-off provision in the lease did not prevent a counterclaim. Its purpose was to prevent Blacks from holding up payment, but not to extinguish a counterclaim.

## COMMENT

Some may view the Supreme Court's decision as an attempt to strike a balance between landlords and tenants by protecting landlords' cash flow and enabling landlords to pay for services, whilst allowing tenants to take action if necessary. That said, hard-pressed tenants may not have the funds to mount a challenge and landlords, already faced with ongoing financial pressures, particularly in the retail sector, will not welcome the prospect of rebate claims from tenants over disputed service charge payments. Another battle may be on the horizon.