

## **Princes House Limited-v-Distinctive Clubs Limited (25/09/06)**

### **-Disputes over commercial Service Charges.**

**The Message:** Unless commercial landlords and their agents deal with the recovery of service charges with proper scrupulousness, tenants may refuse to enter Leases which provide for full recovery of service charges or may require these charges to be regulated by statute.

**The Case:** Following the dismissal of a claim by a landlord for service charges which would have totalled some £700,000, the Judge has made severe criticisms as to the manner in which landlords and their agents often deal with such matters (Princes House Limited and Princes House (Two) Limited v Distinctive Clubs Limited) (25/09/2006).

The dispute related to a claim by the landlord, Princes House, in relation to the tenant's liability to contribute by way of service charge to the cost of roofworks carried out in 2004 at Princes House, 190/195 Piccadilly, London W1. The defendant tenant occupies the basement as a casino at aren't of £413,000 per annum and there are retail shops on the ground floor and the upper floors comprise offices occupied by the British Association of Film and Television Artists ("BAFTA").

There were problems with the roof even before the tenant took a Lease in 1998 and the Lease included a provision which capped the service charges at a very small sum in relation to works carried out during the first 5 years. It was not clear whether this cap was agreed because of the knowledge that substantial roof repairs were required or for some other reason.

The landlord covenanted under the Lease to use all reasonable endeavours to comply with its repairing obligations but the works to the roof were delayed for some years due to a number of reasons. The principal cause of the delay was the need to relocate all BAFTA's plant and equipment on the roof by building a new plant deck to house it all. Despite the costs originally being estimated at £500,000 in 2002, the final cost was eventually some £2 million of which £500,000 related to the new plant deck. The landlord sought to hold the tenant liable to contribute to all the works, the tenant's total liability being assessed at about £700,000.

The Judge held that the main roofworks were justifiable repairs but that the new plant deck was an improvement for the sole benefit of BAFTA and these costs were irrecoverable. However, he held that, in any event, none of the costs incurred were recoverable as, if the landlord had used reasonable endeavours, the roofworks should have been completed by 2003 and the tenant would not have had to contribute anything at all as its service charge liability would still have been capped at that time.

The Judge saw no merit in a whole host of technical arguments raised by both sides in relation to the construction of the Lease and he considered this case contained many of the typical elements which cause disputes of this kind. He criticised the landlord for claiming sums that were not due and for failing to give the tenant any proper explanation for the substantial increase in the costs of the works.

The Judge saw fit to point out that commercial tenants are entitled to expect the professionals dealing with service charge recovery to perform their roles with diligence, integrity and independence and for them not to be simply intent on recovering as much as they can for the landlord. He noted that dissatisfaction was sufficiently high that there were signs that the commercial letting market was beginning to reject the insertion of "full recovery service charges" in leases and he highlighted the fact that residential service charges are now closely controlled by statute.

