

Ruling Underlines Impact of Recession on Commercial Rents

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In a case which illustrates the impact of years of recession on commercial rents in some parts of the country, the High Court in *Bywater Properties Investments v Oswestry Town Council* (2013) has rejected tenants' arguments that they should have their rent on shop premises reduced to levels that were first agreed in the 1960s.

The shop was first let by Oswestry Town Council for 99 years to the now defunct retail giant, Woolworths, in 1963. The lease contained provision for landlord-only rent reviews every 25 years. The Town Council elected to increase the rent in 1988 but decided not to do so in 2013 on the basis that that might well lead to a reduction in the rent payable.

The tenants of the shop, Woolworths' successors, argued that, on a true reading of the lease, the landlord's election not to instigate a rent review had the effect of reducing the rent payable to that which was first agreed in 1963. Had that argument succeeded, the tenants would have saved approximately £1 million over the next 25 years.

The dispute as to interpretation arose because the rent review clause did not make express provision for circumstances in which the Town Council had invoked the same on the first rent review date, thus increasing the rent, but elected not to do so when the next rent review date fell.

The tenants submitted that the Town Council's interpretation of the lease would have the effect of converting a landlord-only rent review provision into an upwards only, or ratchet, clause. However, in deciding the issue in favour of the landlord, the Court found that its interpretation of the lease, although requiring the insertion of some implied words, was more 'natural' than that contended for by the tenants.

Although neither interpretation of the lease made better common or business sense than the other, the Court noted that the original tenant, doubtless professionally advised, was prepared to agree the landlord-only rent review provision. On that basis, it was to be assumed that Woolworths had accepted the risk that the Town Council might not invoke the rent review clause, with the result that the tenants would be unable to reap the benefit of any reduction in open market rental values since the last review date.

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