

Obvious Mistake in Contract Not Fatal

A landlord and tenant case has potential implications for all businesses.

It involved a landlord who was negotiating with his tenant over the renewal of a lease. The landlord inserted a clause in the lease which erroneously said 'in the case of a notice given by the landlord, the tenant shall have paid all the rents'. As the intention was to limit the tenant's rights to break the lease if it had not performed its obligations fully, the word 'landlord' was clearly an error and should have been replaced by 'tenant'.

The tenant did not notify the landlord that the clause was incorrect and agreed to the lease as it stood. Some time later the tenant sought to break the lease. The landlord refused, saying that as it was in arrears, the tenant was therefore in breach of the clause. The tenant claimed it was not.

The case went as far as the Court of Appeal, which upheld the landlord's claim that the lease was so obviously incorrect that justice was served by reading into it the correct wording.

A party to a contract who notices that it contains an obvious mistake so that it does not represent the true intention may well find that the courts will not support their position if the result would be illogical or unjust.