

Update: 14 November 2011 What the lease says is what the lease says



Fleming Muntz
Solicitors



Summary

A recent decision by the NSW Court of Appeal, *Miwa Pty Ltd v Siantan Properties Pte Ltd*, gave a strictly literal interpretation to a lease clause, despite the unusual result.

What were the facts?

A lease provided that the landlord would pay the tenant \$45,000 as a contribution to its fitout after the tenant had signed the lease documents. It also contained an option for a further lease on the same terms, exercisable by the tenant.

The tenant exercised the option and claimed that the new lease should also contain the provision about a \$45,000 payment on provision of the signed lease. When the landlord refused, the tenant withheld rent payments until the \$45,000 has been offset.

What was the problem?

The option should have been for a lease on the same terms, apart from the fitout contribution.

It is settled law that provisions in commercial agreements will be varied by a court if they are 'absurd', even if there is no ambiguity about the meaning. The question here was whether it was 'absurd' for the fitout contribution to be paid again at the start of the option period.

What was the decision?

The case was heard first by a single judge in the NSW Supreme Court who held that it would be an absurd result if the literal meaning of the clause was upheld.

The case then went to the Court of Appeal where all three judges took the opposite view. They noted that 'the test of absurdity is not easily satisfied', and said:

the courts have no mandate to rewrite agreement ... merely to give a provision an operation which ... might make more commercial sense.

How can Fleming Muntz help?

Leases are often regarded as trivial documents but, as this case shows, there is ample opportunity to get even the basics wrong. Our accredited business law specialists can ensure that what the lease says is what it is *meant* to say.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

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