

Insights

## BRIEFCASE 2023 QUARTER 1: KEY REAL ESTATE CASES AND UPDATES

SPECIAL SUPREME COURT EDITION

Mar 30, 2023

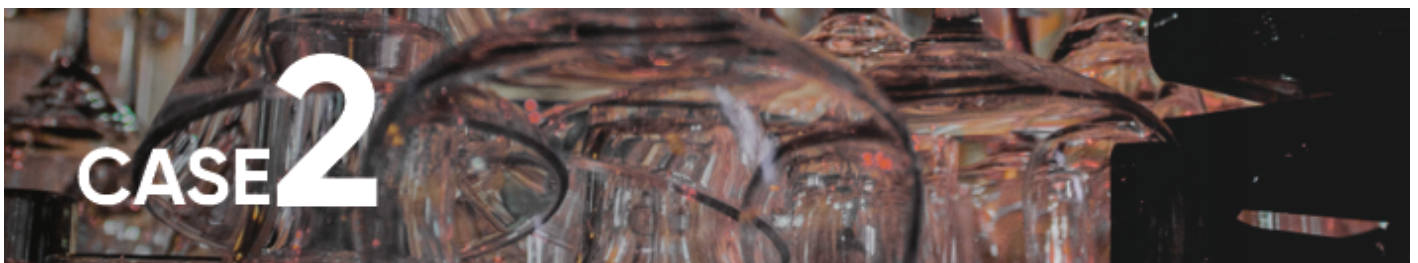


*BARTON V MORRIS*

### SUPREME COURT REFUSES TO AWARD COMMISSION FOR £6M RESIDENTIAL PROPERTY SALE

“I am therefore satisfied that it is not possible to imply a term into this agreement to the effect that Mr Barton will be paid a reasonable fee if the sale was for less than £6.5m. It is not possible to say that there is any particular fee to which the parties would clearly have agreed, or which is so obvious that it goes without saying and it is not necessary to imply such a term to give the agreement business efficacy or coherence.”

[Read about why this case is important >](#)



*AVIVA V WILLIAMS*

### CONTRACTUAL FREEDOM FOR LANDLORDS TO DETERMINE SERVICE CHARGES IS PRESERVED...TO A POINT

“In my judgment it was not the purpose or effect of section 27A(6) to deprive that form of managerial decision making by landlords of its ordinary contractual effect, save only to the extent that the contractual provision seeks to make the decision of the landlord or other specified person final and binding, so as to oust the ordinary jurisdiction of the FtT to review its contractual and statutory legitimacy.”

[Read about what the court said >](#)



*FEARN V TATE GALLERY*

## **NOTHING OVERLOOKED! NO CHANGE TO THE LAW OF PRIVATE NUISANCE IN TATE VIEWING PLATFORM CASE**

“... as well as being contrary to principle, the notion that visual intrusion cannot constitute a nuisance is not supported by precedent and indeed that such direct authority as there is positively supports the opposite conclusion.”

[Read about Fearn v Tate Gallery >](#)



*SARA & HOSSEIN ASSET HOLDINGS V BLACKS*

## **PAY NOW, ARGUE LATER!**

“Such an interpretation provides real benefit to the landlord not only in terms of cashflow but also because, from the landlord’s perspective, there is a world of difference between the tenant being able to hold up payment whenever charges are disputed and the tenant being required to pay first and then to have to take the initiative to initiate and establish a claim.”

[Read about Sara & Hossein Asset Holdings V Blacks >](#)



*RAKUSEN V JEPSEN*

## **SUPREME COURT DECIDES THAT A RENT REPAYMENT ORDER CANNOT BE MADE AGAINST A SUPERIOR LANDLORD**

“We accept that the interpretation we take renders RROs less effective than they perhaps could be if they were to be made available against superior landlords. But in our view that development would undermine the clear definition of an RRO, as set out in section 40(2) of the 2016 Act, and would therefore require new legislation.”

[Read about why Rakusen V Jepsen is important >](#)

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- Real Estate
- Real Estate Disputes

## MEET THE TEAM



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