



The Impact of the Pandemic on Lease Renewals

In the first case dealing with the inclusion of pandemic rent suspension clauses in a lease renewal, Judge Richard Parkes QC handed down judgment in the case of *WH Smith Retail Holdings Limited v Commerz Real Investmentgesellschaft mbH* on 25 March 2021.

The case involved negotiations of a new lease under section 26 of the Landlord and Tenant Act 1954. The tenant operated a newsagent and Post Office from a unit at Westfield shopping centre and their classification as an essential retailer meant that they have remained open throughout the pandemic. It was an uncontested lease renewal, with the parties having already agreed the majority of the terms of the new lease. The parties agreed that a pandemic rent suspension clause would form part of the new lease, that the rent reduction would be 50% and that the tenant would be obliged to account to the landlord for any financial benefits received from the Government for support regarding rent. However, there was disagreement relating to the trigger of the rent suspension clause.

The landlord's position was that the pandemic rent suspension clause should be triggered when the tenant was forced to close as a result of government-imposed restrictions. In contrast, the tenant asserted that the trigger should be the closure of non-essential retailers. The tenant's argument was that it was not entitled to furlough support as an essential retailer but had seen a drop in sales due to the large reduction in footfall at Westfield shopping centre as the majority of the units had been closed for a substantial period of time.

The court agreed with the tenant, confirming that the trigger of the rent suspension clause should be the closure of non-essential retailers with Judge Richard Parkes QC commenting that the benefit of the tenant being allowed to stay open as an essential retailer was "*more notional than real*".

Despite not being a binding authority as the case was heard at County Court level, the importance of is two-fold:

1. Pandemic rent suspension clauses are likely to become the norm, at least in leases for commercial premises; and
2. As it is the first case dealing with pandemic rent suspension causes, it is likely that judges will consider it when hearing future cases.

Given the above and the impact of the pandemic, it appears that it may well become difficult for landlords to avoid the inclusion of a pandemic rent suspension clause albeit the parties, in this case, had agreed the inclusion in principle. It remains to be seen if landlord's oppose rent suspension clauses (or other connected terms) whether the Court will order it. Landlords should however give thought to the inclusion of a pandemic rent suspension clause at the outset of negotiations for a renewal lease if required by the tenant.

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