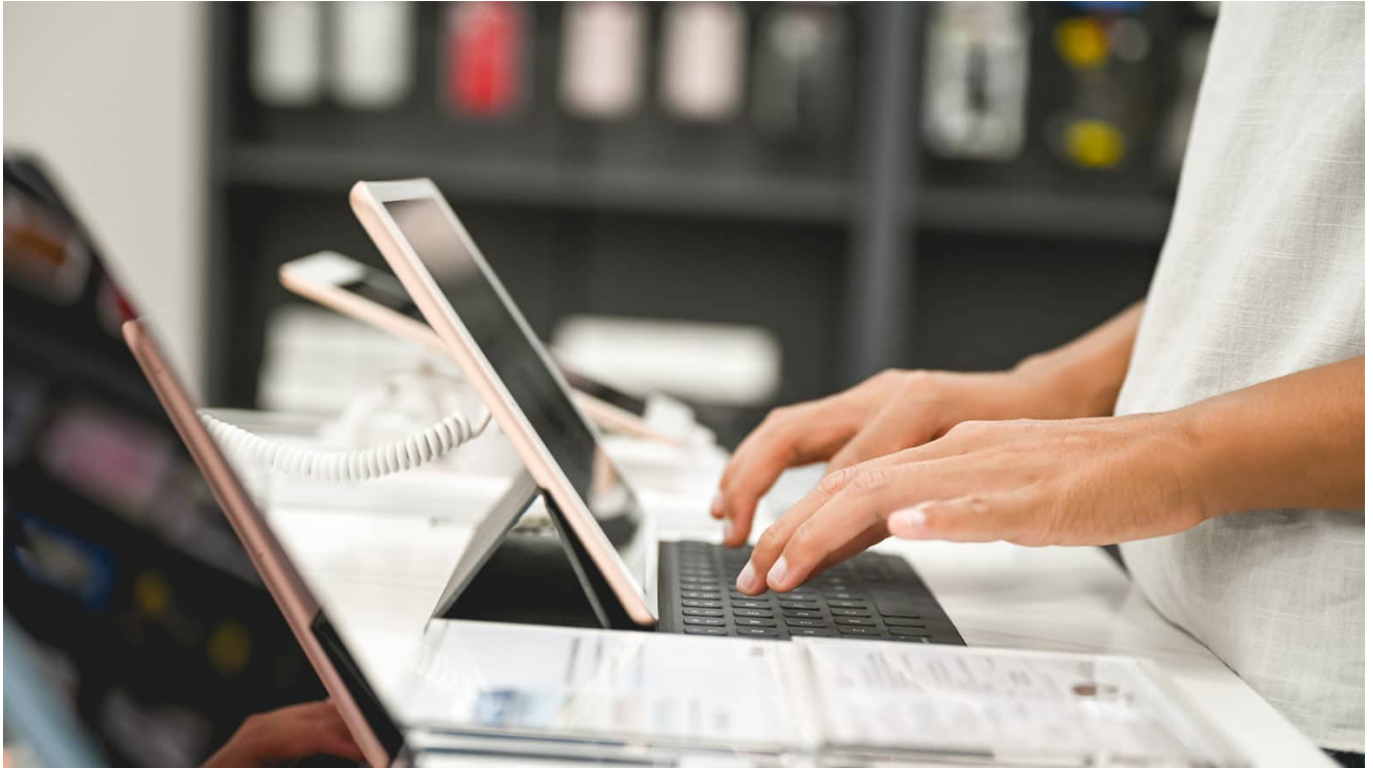


Business lease renewals and the pandemic



Strange things tend to pique the interest of a property litigator, and the recent county court judgment of *WHSmith Retail Holdings Limited v Commerz Real Investmentgesellschaft MBH [2021]* was one of those. Few unopposed lease renewals run to trial, so guidance as to how the courts will approach issues such as pandemic rent suspension clauses is always noteworthy, particularly over recently hotly contested issues such as the extent and trigger provisions of pandemic/Covid-19 rent suspension clauses and side letters.

Rent suspension clauses

The landlord had conceded that such a clause should be included, but sought to limit its function to when WHSmith were not able to trade. Importantly, as the landlord was not contesting the principle of such a clause (and therefore that some of the risk arising from Covid-19 restrictions was to be shared), the tenant did not bear the usual burden of persuading the court that the change was reasonable. The court held the clause should be triggered by the wider closure of non-essential retail, reflecting the substantial drop in footfall faced by the tenant which was able to continue trading. Interestingly, the court also held the inclusion of such a clause did not warrant an upwards adjustment in the rent – it felt the market had already “priced this in”.

Interim rent

The case provides a useful example of Section 24C(3)(a) of the 1954 Act. This provides that if it can be shown that the market differs substantially due to the time passed between the interim rent date and the date on which the renewal rent was assessed, then the interim rent is to be assessed at the interim rent date. The rental market was shown to have fallen substantially between the 1 October 2018 interim rent date and the late 2020 trial and, as a result, the landlord achieved an interim rent which was significantly higher than the new rent.



Whilst this judgment was only at county court level, and the judge did not have to assess the more stark question of whether such a suspension clause should be included or not, tenants (and retailers in particular) may feel encouraged by the judge's comments noting the widespread demand for such clauses in the market.

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