

## Further commercial rent arrears victory awarded to landlords



In previous posts we have commented on High Court cases brought by landlords for judgment in respect of arrears of rent accruing during the Covid pandemic.

In both the *TFS Stores* case and the *Cine-UK* case a variety of arguments were deployed by the tenants to try and defeat the landlord's claims. In each case the court not only ruled against the tenant but also decided the matter summarily, meaning it was felt each time that there was no reasonable prospect of those arguments being successful at a full trial and no other reason why the case should proceed to a final hearing.

Judgment in *London Trocadero (2015) LLP v Picturehouse Cinemas Limited & Others* was published on Tuesday. As with the earlier cases the court decided the case summarily and in favour of the landlord. While many of the arguments ventilated were similar to those raised in the earlier cases, there are a couple of specific points worthy of note.

Prior to the summary judgment hearing the Defendants applied to the court for an adjournment for the following reasons:

- The tenants' covenants were guaranteed by Cineworld Cinemas Limited (the third Defendant). Cine-UK Limited (part of the Cineworld Group) was one of the unsuccessful Defendants in a previously reported decision and is currently seeking to appeal that decision directly to the Court of Appeal. It was argued that, given the outcome of the appeal would bind the High Court, a determination on the Trocadero claim should not be made until after that process has concluded.
- The Defendants contended that potential legislative changes aimed at regulating the payment of 'Covid

arrears' meant that the determination of this case should await the passing of any such legislation.

Both of these arguments were rejected. We do not have sight of the detailed reasoning behind that rejection as it was part of a separate judgment. It is, however, we think, likely to be based upon a combination of uncertainty of timescale and outcome in each case. No-one knows whether the appeal will proceed to a final hearing and, if it does, what the outcome would be and indeed when we would know it.

There is similar uncertainty regarding Government intervention. The effect of this would likely be that the court could not consider either reason as a legitimate basis for delaying the determination of what otherwise might appear to be a well-founded claim for unpaid rent.

## A new angle

There was one new legal argument relied upon by the tenants which had not been previously considered.

It was contended on behalf of the Defendants that the leases were granted on the basis that the premises demised could be used as a cinema. It followed that for periods where the premises could not be so used, the tenants should not be liable to pay rent as there was a failure of the basis on which the leases were granted.

This argument is in some respects similar to the argument that the leases are frustrated. Frustration as a defence to the claims for arrears was rejected previously and the court rejected the 'failure of basis' argument this time round. There was no warranty that the premises could be used as a cinema. The leases specifically said otherwise.

The allocation of risk in relation to use and occupation was clearly laid out in the leases. The leases identified circumstances in which the premises could not be used as a cinema. Taking all of this into account the continued use as a cinema throughout the entirety of the term was not considered to be so fundamental to the grant of the leases so as to support the argument advanced and the court would not therefore entertain the interference with the agreed terms of the lease on this basis.

While it may be that everyone has to reassess matters once we have a determination from the Court of Appeal and/or Government intervention, the takeaway from the latest decision is that we do not know the outcome of either and as such they should not be seen as relevant considerations.

A link to the High Court decision is [here](#).

## How we can help

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