

Covid Rent Arrears: Cinema operators' appeals dismissed

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The cases are *London Trocadero (2015) LLP v Picturehouse Cinemas Ltd* and *Bank of New York Mellon (International) Ltd v Cine-UK Ltd*. The tenants (Picturehouse Cinemas Ltd and Cine-UK Ltd) are both cinema operators forced to close as a result of the legislation introduced during the pandemic (along with non-essential retailers, restaurants and gyms).

Both tenants argued that rent should not be paid in respect of the periods when it was unlawful to operate a cinema from the demised premises for the following reasons:

- It was fundamental to the leases that the premises would be capable of lawful use. The Covid legislation caused a failure of that and the landlords would be unjustly enriched in respect of any rent paid during the periods the premises could not operate as cinemas;
- It should be implied that the tenants be relieved of the obligation to pay rent when they could not lawfully use the premises for the purposes they were intended.

Further, in respect of the *Cine-UK* case, the tenant argued that rent should not be payable if the premises were 'damaged' and 'not fit for occupational use'. The tenant said that the term 'damage' encompassed financial and non-physical damage.

All three arguments were rejected by the Court of Appeal. The Court of Appeal agreed with the landlords that the rent paid was consideration for the exclusive use of the premises for the terms of the lease and rejected the tenants' argument that there was an assumption that the premises could be lawfully used as cinemas. Put simply, the landlords' argument was consistent with the terms of the lease, and the tenants' was not. The judgment also drew a clear distinction between damage to the tenants and damage to the property, meaning that the rent cesser provisions were not triggered.

The judgment is another example of the failure of tenants' arguments to avoid paying rent during the pandemic and demonstrates that reaching agreement with the landlord is likely to be the most commercial solution.

The Commercial Rent (Coronavirus) Act 2022 introduced the arbitration scheme in relation to 'ring fenced' arrears accrued during the pandemic. Landlords and tenants have until 23 September 2022 to refer matters to an arbitrator; any tenants struggling to reach agreement with their landlord should consider utilising this process whilst it is available.

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