

COMMERCIAL RENT (CORONAVIRUS) ACT 2022

Between

(APPLICANT TENANT)

and

(RESPONDENT LANDLORD)

In respect of

***** , CHISWICK, LONDON, W4

Iain Coxon BSc MRICS ACI Arb
IC Retail Property Limited
262-264 Regent Street
London
W1B 3AQ

1.0 PRELIMINARY

- 1.1 The Applicant, *****, is a tenant of premises at *****, Chiswick, W4 and is represented in this matter by *****.
- 1.2 The Respondent, *****, is the landlord of said premises and is represented by *****.
- 1.3 I am advised that **** lacks legal capacity and is therefore acting by deputies from ***** who are issuing instructions.
- 1.4 By way of a lease dated 18 August 2003 the property was demised to the applicant tenant, and I am advised that the rent passing at the date of this case was £17,750 per annum. The tenant is currently holding over.
- 1.5 The Applicants applied to the RICS for the appointment of an Arbitrator under the Commercial Rent (Coronavirus) Act 2022 (“2022 Act”) and I was duly appointed in this capacity on 2 December 2022. The application was made under procedure D.
- 1.6 It has subsequently been agreed between the parties that, due to the level of claim in this matter, and in order to keep costs at a minimum, the matter will be dealt with under procedure B of the RICS Guidance Note.
- 1.7 I have received and considered the following documents: -
 - Notice of Intention 19/08/2022
 - Evidence in Support 20/08/2022
 - Application to RICS 21/09/2022
 - Applicant Formal Proposal 23/09/2023
 - Response to reference 26/09/2022
 - Respondent Formal Proposal 23/02/2023
- 1.8 The above documents have been copied to both parties.

2.0 LEGAL FRAMEWORK

- 2.1 Section 1(1) of the 2022 Act provides that the Act “... enables the matter of relief from payment of protected rent debts due from the tenant to the landlord under a business tenancy to be resolved by arbitration”.
- 2.2 Section 3(1) of the 2022 Act provides that “a protected rent debt” is a debt under a business tenancy consisting of unpaid protected rent. There is no dispute that the tenancy of the premises in this case was a business tenancy at the relevant time (s.3(2)(b)).
- 2.3 Section 4 of the 2022 Act provides that a business tenancy was adversely affected by Coronavirus if, for any relevant period, the whole or part of the business, or the

whole or part of the premises, was subject to a closure requirement. The landlord has disputed whether the subject business/property was subject to a closure requirement.

2.4 Section 13 of the 2022 Act sets out the main issues which the Arbitrator must decide, as follows: -

- Is the tenancy a business tenancy, and is there a protected rent debt as defined by the 2022 Act?
- Is the tenant’s business viable, or would it be viable if rent relief were given?
- If so, should the tenant be given relief and, if so, what form should it take?

2.5 I am required to consider the formal proposals set out by the parties and decide which is more consistent with the principles set out in section 15 of the Act. If I consider that neither proposal is consistent, then I must make an award that I consider appropriate.

2.6 The principles set out in section 15 are as follows; -

- The award should preserve (or restore and preserve) the viability of the tenant’s business, whilst also preserving the landlord’s solvency.
- The tenant should meet its obligations as regards payment in full and without delay.

2.7 Section 16 of the 2022 Act provides for the arbitrator’s assessment of the viability of the business of the tenant and the solvency of the landlord.

3.0 SUBMISSIONS OF THE PARTIES

3.1 Applicant – *****

**** sets out in his email dated 20 August 2022 and formal proposal dated 23 September 2022 that the protected debt is £20,708.38, based on a monthly rent of £1,479.71 for the period 01/03/2020 to 30/04/2021. He proposes that 75% of the protected debt is written off and following an on-account payment of £4,437.51 on 16/12/2020, the balance due is £739.58.

The property is used as a dry cleaner, but *** advises that, part of the business provides a tailoring service and, in his letter dated 20 August 2022 he advises that 51.1% of the sales (circa 40-45% of floor space) relates to tailoring (sales were stated to be 55% in the formal proposal dated 23/09/2022). No evidence has been provided to support this statement. Whilst the property was not subject to a “closure requirement”, part of the business could not be operated from this premises due to restrictions such as the 2 metre rule and no contact.

Following my email of 06/02/2023, I was provided with the accounts for the whole business. As can be seen from the table below, the accounts indicate that the turnover/profit for the business was undoubtedly impacted by covid.

	Turnover	Gross Profit	Profit	Retained Earnings	Total Assets Less Liabilities
Y/E 2019	£7,202,964	£622,993	£344,464	£294,798	£1,667,293
Y/E 2020	£4,660,746	£84,676	£271,972	£266,770	£2,475,812
Y/E 2021	£3,111,697	(£714,880)	(£254,821)	(£103,061)	£1,922,453
Y/E 2022	£5,392,959	£573,588	£8,387		£1,731,184

The turnover of the business fell in 2020 and again in 2021 but the turnover for the year ending 08/2022 is significantly higher. There has also been a major upturn in the gross profit and in 2022 the business returned to net profit, albeit small. In the latest accounts the company has net assets of £1.7m.

Paragraph 6.3 of the Guidance Note (Department for Business, Energy and Industrial Strategy) states that “In making the assessment of viability a key question is whether protected rent debt aside, the tenant’s business has, or will in the foreseeable future, have the means and ability to meet its obligations and to continue trading”. This is to be considered at the date of assessment.

3.2 Respondent – *****

****, on behalf of the respondent, set out his client’s position in his letter dated 26 September 2022. I am not concerned with the proposal set out in in section 1 of that letter, as this falls outside the scope of the 2022 Act. In section 2, **** questions the eligibility of the application due to the applicant’s failure to comply with procedure, lack of evidence and the fact that launderettes/dry cleaners were considered an essential service.

Following further correspondence, the respondent submitted a proposal dated 23 February 2023 (from *****), in which they once again question the validity of the reference to arbitration.

However, if I conclude the application is valid, the proposal questions the applicant’s calculation of the “protected rent debt” as the relevant period is 21 March 2020 to 21 April 2021. On this basis they calculate the “protected rent” to amount to £17,798.63.

The respondent landlord proposes no relief from the protected rent debt. They also state that, from the information supplied, the applicant’s business would remain

viable without any relief, and (in line with the 2022 Act) there is no need for any relief.

Information is also supplied relating to the solvency of the respondent landlord.

4.0 PROTECTED RENT DEBT

4.1 I will deal with the eligibility of the claim later in this Award but in the first instance, will deal with the level of the “protected rent debt”, as this is not agreed between the parties.

4.2 For retail property the relevant period of closure is 21 March 2020 to 12 April 2021 (when non-essential retail was permitted to re-open). I have calculated the “protected rent debt” as follows (assuming the rent is quarterly as per clause 2 of the lease dated 18 August 2003); -

ANNUAL RENT - £17,750	
21/03/2020 to 24/03/2020 (4/90 days)	£197.22
March 2020 quarter	£4,437.50
June 2020 quarter	£4,437.50
September 2020 quarter	£4,437.50
December 2020 quarter	£4,437.50
25/03/2021 to 12/04/2021 (19/91 days)	£926.51
TOTAL	£18,873.73

4.3 The claim for relief has been made as part of the business (tailoring) was effectively subject to a closure requirement.

5.0 ELIGIBILITY OF THE CLAIM

5.1 At the pre-arbitration stage it is necessary for the parties to follow certain requirements set down in the 2022 Act – I have received the documents referred to in section 1.7 of this Award which appear to comply with the timing requirements. *** has questioned the veracity of the letter from JS dated 20 August 2022. This is dated the day after the notice of intention, but I have no reason/evidence to question its relevance to this case.

5.2 There is no doubt that this referral relates to a business tenancy.

5.3 “Protected rent debt” is defined in S.3 of the 2022 Act, which states that the rent will be “protected rent” if –

- a) The tenancy was adversely affected by coronavirus, and
- b) The rent relates to a protected period.

- 5.4 Issue (a) is dealt with in S.4 of the 2022 Act and I accept in principle that part of the business carried on at the property was impacted by the restrictions imposed due to the covid pandemic. Whilst I understand tailors weren't mentioned specifically, restrictions such as no contact and the 2-metre rule etc prevented continued operation of this part of the business.
- 5.5 Issue (b) has been dealt with earlier in this Award.
- 5.6 In assessing the viability of the tenant, I have considered the financial information provided by ***. The accounts for the years ending 08/2012, 08/2020 and 08/2021, together with the management accounts for the y/e 2022 illustrate to me that whilst covid clearly impacted the business, it is a viable company.
- 5.7 The turnover of the business fell significantly during the periods of lockdown and restrictions but the accounts for the y/e 2022 illustrate an improvement in turnover to over £5m and a return to profit (albeit small).
- 5.8 In their formal proposal dated 23/02/2023, the respondent considered the solvency of the landlord, scheduling assets of circa £2.495m and liabilities of £1.367m. Further comment made in relation to **** personal situation indicate that his financial position is "fluid" but from the information provided I consider that he remains solvent.

6.0 RELIEF FROM PAYMENT

- 6.1 The subject property was not subject to a closure requirement, although I accept in principle that, due to the restrictions in place, part of the business was adversely affected by coronavirus i.e. tailoring.
- 6.2 In the case of the subject property, I have assessed the "protected rent debt" for the period 21/03/2020 to 12/04/2021 equates to £18,873.73.
- 6.3 In my view the business is viable, and I must determine whether relief is required to maintain viability i.e. if no relief is granted would the viability of the business be jeopardised.
- 6.4 I have concluded that the business will remain viable without any relief from the "protected rent debt" and in accordance with the 2022 Act, the debt should be paid in full and without delay.

7.0 COSTS

- 7.1 Section 19 of the 2022 Act relates to the arbitration fees and expenses.
- 7.2 The Arbitration fees are defined as the Arbitrator's fees and expenses and the fees and expenses of any approved arbitration body. Under procedure B, the arbitrators

fee is £1,500 (plus VAT). In addition, the Applicant has paid the application fee of £450 (plus VAT) to the RICS.

- 7.3 It was incumbent on the parties to try and reach an agreement in this matter and, if the matter is referred to the RICS, to at least agree the relevant procedure under the RICS guidance note (reflecting the level of protected rent debt).
- 7.4 As there was no agreement regarding the appropriate procedure, the application was made under procedure D, and subsequently changed to procedure B by agreement.
- 7.5 The formal offers from the parties (23/09/2023 for the applicant and 23/02/2023 for the respondent) make no pleadings on the question of costs and I therefore follow the default position under the 2022 Act, that each party pay half of my fee and the application fee.

8.0 AWARD

8.1 I hereby Award and Direct as follows; -

- A. The Applicant will be granted no relief for any of the “protected rent debt”.
- B. The outstanding debt is to be paid by the Applicant within 28 days of this Award.
- C. No interest is due on the outstanding debt.
- D. The Respondent pays the Applicant half of my fees and one half of the RICS application fee within 28 days of this Award.

8.2 An anonymised copy of this Award will be published by the RICS.

8.3 The seat of this Arbitration is England and Wales.

8.4 This Final Award is made and published this 30th day of March 2023.



IAIN COXON BSc MRICS ACI Arb

ARBITRATOR

Dated – 30th March 2023

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