

**IN THE MATTER OF AN ARBITRATION UNDER THE
COMMERCIAL RENT (CORONAVIRUS) ACT 2022**

BETWEEN

**MR ABINBOLA BALOGUN
(APPLICANT)**

&

**MIRETTE INVESTMENTS LIMITED
(RESPONDENT)**

IN RESPECT OF 25-27 WATFORD WAY, LONDON NW4 3JH

FINAL AWARD

BY

**BY SIMON S GOULDBOURN BSc MRICS ACI Arb
ARBITRATOR**

MEMBER OF
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1.0 *Preliminaries*

- 1.1 The Applicant is Mr Abinbola Balogun (AB), the tenant of premises known as 25-27 Watford Way, London, NW4 3JH. The Applicant represented himself and is also represented by Mr Jon Gilbert (JG) MHHP Law LLP.
- 1.2 The Respondent is Mirette Investments Limited the landlord of the aforementioned premises. The Respondent is represented by Mr J Kandler (JK) of Bude Nathan Iwanier LLP and by Mrs Basya Mansoor (BM) of OCK Chartered Surveyors.
- 1.3 I have been provided with a copy of the original lease dated 30 June 2006 and the latest lease dated 22 June 2018 relating to these business premises subject to a claim for relief from full payment under the Commercial Rent (Coronavirus) Act 2022 (CRCA).

2.0 *Procedural Background*

- 2.1 On 22nd November 2022 I was appointed by the President of the Royal Institution of Chartered Surveyors (RICS) to act as an arbitrator under the CRCA.
- 2.2 In its application form dated 15th September 2022, the Applicant requested the arbitration be conducted in accordance with the RICS arbitration procedure "C".
- 2.3 I convened a pre-arbitration meeting with the parties during which my fee basis was agreed together with a timetable for lodging Proposals and Amended Proposals.
- 2.4 JK lodged a Witness Statement Proposal prepared by BM of OCK Chartered Surveyors, the landlord's managing agents, dated 19th December 2022.
- 2.5 JG responded on behalf of the Applicant on 6th January 2023 and thereafter a dispute followed as to without prejudice correspondence being entered into the Amended Proposal by the Applicant.
- 2.6 The Applicant's Amended Proposal was ultimately lodged on 7th March 2023.
- 2.7 JK made no further Amended Proposal in response to the Applicant's amended proposal.

3.0 *Legal Framework*

- 3.1 The CRCA enables resolution by arbitration (if it cannot be resolved by agreement) of relief from payment of a protected rent debt due to be paid by the tenant to the landlord under a business tenancy.
- 3.2 A qualifying “protected rent debt” applies to a business tenancy which has been adversely affected by coronavirus such that the whole or part of those business premises were subject to a closure requirement.
- 3.3 The “protected period” for business tenancies adversely affected by coronavirus in England is the period 21st March 2020 to 18th July 2021.
- 3.4 Under s.2 (1) of the CRCA, rent means an amount consisting of one or more of the following:
- a) *an amount payable by the tenant to the landlord under the tenancy for possession and use of the premises comprised in the tenancy (whether described as rent or otherwise);*
 - b) *an amount payable by the tenant to the landlord under the tenancy as a service charge;*
 - c) *interest on an unpaid amount within paragraph a) or b).*
- 3.5 In my capacity as arbitrator under s.6 (2) of the CRCA I am to consider the matter of relief from payment of a protected rent debt, my remit to include any one or more of the following:
- a) *writing off the whole or any part of the debt;*
 - b) *giving time to pay the whole or any part of the debt, including by allowing the whole or any part of the debt to be paid by instalments;*
 - c) *reducing (including to zero) any interest otherwise payable by the tenant under the terms of the tenancy in relation to the whole or any part of the debt.*
- 3.6 A key arbitrator’s principle under s.15 (1) of the CRCA is aimed at preserving, or restoring and preserving, the viability of the tenant’s business, so far as that it is also consistent with preserving the landlord’s solvency.
- 3.7 In assessing the viability of the business of the tenant, the arbitrator is directed by s.16 (1) of the CRCA and must, so far as known, have regard to:
- a) *the assets and liabilities of the tenant, including any other tenancies to which the tenant is a party*
 - b) *the previous rental payments made under the business tenancy from the tenant to the landlord*
 - c) *the impact of coronavirus on the business of the tenant, and*

- d) *any information relating to the financial position of the tenant that the arbitrator considers appropriate.*
- 3.8 In assessing the solvency of the landlord, the arbitrator must, under s.16 (2) so far as known, have regard to:
- a) *the assets and liabilities of the landlord, including any other tenancies to which the landlord is a party, and*
- b) *any other information relating to the financial position of the landlord that the arbitrator considers appropriate.*
- 3.9 Whilst making an assessment of the tenant's viability and landlord's solvency, I am to disregard the possibility of the tenant or the landlord borrowing money or restructuring its business.

4.0 *The Applicant's Proposal*

- 4.1 AB stated that from 30th June 2006 until the end of July 2022 he was the tenant of the subject premises 25/27 Watford Way, London, NW4 3JH.
- 4.2 Copies of the original lease dated 30th June 2006 and latest lease dated 22nd June 2018 were appended to the Applicant's Proposal.
- 4.3 AB stated that from 23rd March 2020 for a period of almost two years his business was forced to close.
- 4.4 AB's premises were trading as an African restaurant but did not provide a large take-away service.
- 4.5 AB said that as a consequence there were long periods when he had no turnover.
- 4.6 AB confirmed that he received a government grant of £34,800 during the pandemic which he used to pay some of the rent due to the Respondent.
- 4.7 AB advised that during the pandemic he had conversations with MB, the Respondent's managing agent, who he said was open to a Covid concession provision, but which did not materialise.
- 4.8 AB advised that the Respondent has issued County Court proceedings to recover £53,083.77 in rental arrears and supplied a copy of the claim with his Proposal.
- 4.9 AB stated that he tried to reach an amicable settlement with the Respondent via his solicitor. He said a meeting was cancelled whilst at the same time the Respondent forfeited the lease on the property locking AB out of the unit.
- 4.10 AB described the Respondent as behaving disingenuously throughout, having no intention to negotiate with him over a rent concession. AB went on to say that service charge and insurance pricing increased during the pandemic making life more difficult for him.

- 4.11 AB stated that this behaviour is typical of the Respondent and recounted instances of adverse issues with the Respondent dating back to 2015. AB refers to legal proceedings commenced by him against the Respondent for the erection of scaffold covering the building for a period of several months instead of the 1 week the Respondent said it would be in place for. He provided no evidence of such claim.
- 4.12 AB referred back to 18th August 2018 when his premises were closed by the Council because of pest infestation which he said was due to the Respondent not maintaining the premises.
- 4.12 AB considered himself a good tenant and did not believe any sums were owed as at March 2020 to the Respondent.
- 4.13 AB stated that following the pandemic his business was beginning to improve until the Respondent forfeited the lease.
- 4.14 AB made a Proposal to repay the sum of £5,000 in full and final settlement.

5.0 *The Respondent's Proposal*

- 5.1 BM is the Respondent's managing agent and set out her response to the Applicant's Proposal.
- 5.2 BM stated that she verbally agreed a repayment plan on 20th July 2021 with AB such that AB would pay £4,600 per month as the restaurant had fully reopened.
- 5.3 BM mentioned that AB asked that his deposit of £3,625 be applied such that arrears would be cleared in 14 months.
- 5.4 BM contended that AB had said he hoped to pay more periodically throughout the year but his worst case scenario would be paying the minimum amount of £4,600 per month.
- 5.5 In support of her contention, BM attached emails asking AB to confirm monthly payments of £4,600 from 1st August 2021.
- 5.6 BM said it was fair to infer from the conversation with AB in July 2021 that his business had recovered and he could afford the agreed payment plan.
- 5.7 BM contended that AB had accrued arrears over many years and at March 2020 there were arrears of £16,478.
- 5.8 BM agreed that AB did make certain payments but wanted to know which part of the £34,800 government grant had been paid by AB to the Respondent as AB has not specified when the money was received and how it was spent.
- 5.9 BM confirmed that parties agreed a total debt was due of £38,403.14 as at 23rd March 2021 and attached a letter confirming the same. This sum

increased to £51,825.38 for the purposes of the County Court Claim made on 25th March 2022.

- 5.10 BM confirmed that the County Court Claim has been stayed pending the outcome of this arbitration. BM stated that the Respondent has suffered a great loss in relation to the property which the Applicant has not acknowledged.
- 5.11 BM rejected accusations from AB that the Respondent had behaved improperly. BM mentioned that the Applicant had cancelled previous meetings and ultimately the Respondent saw no point in having another meeting.
- 5.12 BM said the claim in Court went up to 25th March 2022 when a sum of £51,825.38 was outstanding at that quarter date. The Applicant paid £2,000 to the Respondent 3 days later according to BM.
- 5.13 BM stated that payment was due on 24th June 2022 of the outstanding sums but nothing was forthcoming, nor was any offer of payment for the rents outside of the Covid protection period.
- 5.14 The Respondent decided that the Applicant had no intention to make payment and AB instructed bailiffs to take possession of the subject premises.
- 5.15 BM contested the accuracy of the scaffold dispute and maintained it is irrelevant to this claim. BM went on to counter the August 2018 dispute referred to by the Applicant by appending a notice dated 25th June 2019 under s.146 of the Law of Property Act 1925, served by the Respondent on the Applicant due to accumulation of waste in the yard of the premises.
- 5.16 BM stated that rather than AB being a good tenant, as at March 2020 he owed the sum of £16,478.94.
- 5.17 Further, BM stated that past experience of arrears meant it was necessary for the Respondent to take legal action to recover arrears.
- 5.18 The Respondent's Proposal is to reduce the arrears by one quarter's rent in the sum of £7,250. The Respondent states that the remaining £42,575.38 of arrears should be paid by the Applicant.

6.0 *The Applicant's Amended Proposal*

- 6.1 AB confirmed that he signed an agreement to pay the outstanding amount at the end of the Covid after being verbally promised a Covid discount.
- 6.2 AB said he felt pressured to enter into an agreement with the Respondent but did not sign a later letter committing him to pay £4,600 per month.
- 6.3 AB said the pressure caused by Covid meant the agreement was unsustainable for him.

- 6.4 AB refuted the suggestion he had been a bad tenant, explaining that he had been a tenant for over 16 years before signing a new lease in 2018 for another 10 years.
- 6.5 AB stated that during his period as tenant he had paid a total of approximately £400,000 of rent but the forfeiture of the lease has now restricted his ability to trade and pay sums owed to the Respondent.
- 6.6 AB listed a series of payments he said were made to the Respondent from 30th December 2019 to 17th May 2022 amounting to £40,450.
- 6.7 AB reiterated that the Coronavirus period was dreadful for his business and he just about managed to keep his home. AB expressed some sympathy for the Respondent having to run its own business but stated that he was in a weaker financial state than the Respondent during this period, without further explanation.
- 6.8 AB stated that on 22nd July 2022, the day before a rescheduled meeting with the Respondent, he received notice from the Respondent's solicitor that the meeting had been cancelled for personal reasons. That same day AB said that a Notice had been placed on the premises, 25-27 Watford Way, stating the property had been repossessed.
- 6.9 AB said there had been no prior warnings or notice of intended repossession by the Respondent which was indicative of the strong arm tactics and bullying nature of the Respondent.
- 6.10 AB went on to state that regarding the Coronavirus discount request, the Respondent was unwilling to use the rent deposit to reduce the rent payable. AB says this is contrary to the lease which states the deposit should be held for two years.
- 6.11 AB stated that the loss of stock and fixtures and fittings as a consequence of the repossession has been devastating for him.
- 6.12 AB attached some bank statements showing a variety of payments in and out but did not supply any trading accounts for his business.
- 6.13 AB stated that a large proportion of the Government grant received was paid to the Respondent in rent and rent arrears but there were also stock purchases and sums required to cover living expenses for AB and his family.
- 6.14 AB claimed it was evident from bank accounts available that he paid out a sum equivalent to two thirds of the Government assistance received as rent covering the Covid period.
- 6.15 AB maintained that he had paid all rent in full prior to the Coronavirus period and hoped to operate from the premises again with the Respondent's consent.
- 6.16 AB made an Amended Proposal to offer to repay £8,000 but also required his deposit money to be returned.

7.0 *Respondent's Amended Proposal*

- 7.1 The Respondent's solicitor, JK, simply maintained that he disagrees with the Amended Proposal put forward by AB.
- 7.2 He referred back to the s.146 Notice that had been served by his firm on AB which was proof that AB was a bad tenant.

8.0 *Relief from Payment*

- 8.1 As stated at 3.3 of this Award, the "protected period" for business tenancies adversely affected by Coronavirus in England is the period 21st March 2020 to 18th July 2021.
- 8.2 Both parties to this dispute have made reference to rent arrears outside of the parameters of the "protected period".
- 8.3 I have no jurisdiction to consider relief from payment on any arrears outside of the "protected period".
- 8.4 The disputes referred to by the Applicant in 2015 and 2018 provide background information but carry no weight to these proceedings as they pre-date the "protected period" by a number of years.
- 8.5 The s.146 Notice served on 25th June 2019 also pre-dates the "protected period" by 9 months and there is no mention of further action taken following service of this notice.
- 8.6 The Applicant has made reference to financial difficulty due to being closed during the "protected period".
- 8.7 As a matter of fact, there were a number of dates within the "protected period" that restaurant operators were open to trade or were able to open for trade and offer a takeaway service. It is not clear whether the Applicant opened his business at all during the "protected period".
- 8.8 The Applicant has made no explanation as to why his premises remained closed or largely closed throughout the "protected period" other than stating that they offered little by way of a takeaway service.
- 8.9 The Applicant has provided no audited or management accounts relating to his business in support of his claim for relief from payment.
- 8.10 The Applicant has supplied only details of a series of bank giro credit payments to his current account from Barnet Council.
- 8.11 The Applicant has provided no details relating to the deposit money he refers to and I have seen no reference to the deposit within the leases provided.
- 8.12 A key principle under Section 15 (1) of the CRCA is aimed at preserving, or restoring and preserving, the viability of the tenant's business.

- 8.13 In this instance, there is no business to preserve because the lease has been forfeited by the Respondent.
- 8.14 Even if the Applicant's business had still been operating, I have received insufficient information from the Applicant for me to consider its viability.
- 8.15 The fact that the business has ceased trading means also that I cannot consider preserving, or restoring and preserving, the viability of the Applicant's business.
- 8.16 The Applicant has supplied insufficient evidence in support of its Proposal and has no business for me to consider its viability.
- 8.17 I dismiss the Applicant's Proposal.
- 8.18 An assessment of the Respondent's solvency under Section 16(2) of the CRCA is not possible on the information provided, but its Proposal is to write off the sum of £7,250.
- 8.19 I have had regard to the Schedule of Payments made during the "protected period" which was shown at Appendix AB/4 of the Applicant's Proposal. The schedule was not contested by the Respondent.
- 8.20 The "protected period" covers 485 days and the annual rent payable is £29,000. The total rent due to the Respondent was £38,534.25 plus insurance/service charge of £4,872.03.
- 8.21 The Applicant has paid £11,000 during the "protected period" leaving a balance of £32,406.28.
- 8.22 The Respondent has agreed to a deduction of £7,250, leaving a balance covering the protected rent period of £25,156.28.
- 8.23 The Respondent will not be granted relief from the protected rent debt owed of £25,156.28.

9.0 *Arbitration Costs*

- 9.1 Under s.19 (6) of the CRCA I have discretion as to the apportionment of my own costs.
- 9.2 Both parties have participated in these proceedings to enable me to deliver my Award.
- 9.3 I have given due consideration to these facts when considering apportionment of my costs.

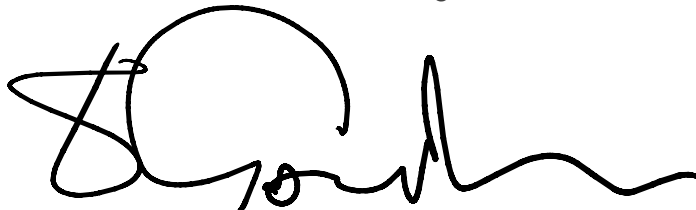
10.0 *Publication*

- 10.1 I am directed by s.18 (2) of the CRCA to publish my Award.
- 10.2 The Award will be published on the website of the RICS.
- 10.3 I do not consider there is commercial information which must be excluded under s.18 (3) of the CRCA.
- 10.4 I intend to publish the Award in full on the RICS website unless either party makes representations to the contrary by 5:30 PM on Wednesday 5th July 2023.

11.0 *Award*

- 11.1 I, Simon Stuart Gouldbourn, Award and Direct as follows:
- (a) The Applicant will pay the protected rent debt of £25,156.28 over 12 months, i.e. £2,096.36 per month, together with interest calculated in accordance with the terms of the lease, the interest accruing from the date of this Award.
 - (b) My costs are to be split equally between the parties and so the Respondent must reimburse the Applicant 50% of the fee, which has been lodged with the RICS.
- 11.2 The seat of this Arbitration is England and Wales.

Signed:



Simon S Gouldbourn BSc MRICS ACI Arb

Date: 5th June 2023