

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

BETWEEN

**AMTEL VENTURES LIMITED
(APPLICANT)**

&

**Mark & Sons Limited
(RESPONDENT)**

**IN RESPECT OF THE WOODMAN PUBLIC HOUSE, 222
DURNSFORD ROAD, WIMBLEDON PARK, LONDON, SW19 8DR**

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

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1.0 *Preliminaries*

- 1.1 The Applicant is Amtel Ventures Limited, the Tenant of premises known as 222 Durnsford Road, Wimbledon Park, London, SW19 8DR. The Applicant is represented by Mr Amir Matinahmadi (AM) of Amtel Ventures Limited.
- 1.2 The Respondent is Mark & Sons Limited the Landlord of the aforementioned premises. The Respondent is represented by Mr Michael Lever (ML).
- 1.3 I have been provided with a copy of the lease dated 21st January 2019 and it is agreed by both parties that the lease creates a business tenancy which satisfies the requirements of the Commercial Rent (Coronavirus) Act 2022 (CRCA).

2.0 *Procedural Background*

- 2.1 On 12th December 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 I was initially appointed to conduct the Arbitration in accordance with RICS Arbitration procedure “D” by default.
- 2.3 Following subsequent exchanges of emails with the parties following my appointment, it was agreed that I would conduct this Arbitration under procedure “B”.
- 2.4 The Applicant made a Proposal for relief from payment under the CRCA by way of application to the RICS for the appointment of an Arbitrator on 23rd September 2023.
- 2.5 Following my appointment, it was agreed with the parties that the Respondent would have until Friday 20th January 2023 to submit a Proposal having considered the Applicant’s Proposal.
- 2.6 My fixed fee under procedure “B” was lodged with the RICS by the Applicant and the Respondent provided a Proposal on 27th January 2023.
- 2.7 AM was subsequently given a 28 day period to provide an Amended Proposal having seen the Respondent’s Proposal and this was provided on 24th February 2023.
- 2.8 ML provided the Respondent’s Amended Proposal on 24th March 2023.
- 2.9 There followed subsequent email exchanges regarding the amount of protected rent debt in dispute which was ultimately resolved.

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 AM submitted his Proposal on 23rd September 2022 advising that he had heard nothing from the Respondent following service of an application to the RICS for the appointment of an arbitrator under CRCA provisions.

4.2 AM then set out a chronological timeline from 16th March 2020 until 7th August 2021 particularly setting out the dates at which his business was able to open for trade as prescribed by national and local restrictions prevalent during the covid period.

4.3 AM highlighted an immediate impact of thousands of pounds of loss as the closure in March 2020 meant disposing of lots of fresh food produce.

4.4 When public houses could re-open in July 2020, AM said at first trade was good but then the overall experience with continued restrictions deterred customers. At that time the Applicant was also experiencing staffing issues as some would not return for safety fears or were abroad as had gone home to be with family and could not get back in to the country.

4.6 AM continued that the "Rule of 6" for gatherings in a public place in September together with mandatory "Test and Trace" added operational costs extended to include PPE equipment.

4.7 With continuing restrictions including a 10 PM curfew, table service only and face coverings on when not seated, AM felt that it would have been better for the business to have been closed throughout the covid period. The business was extremely difficult to operate because many people were fearful of visiting a public house due to restrictions and the government advice in place at that time, according to AM.

4.8 When Tier restrictions applied from November 2020 AM said that alcohol could only be served with a substantial meal at his premises in Tier 2. As pubs were not restaurants trade was consequently very poor.

- 4.9 AM advised that the Applicant was paying the Respondent £2,500 per week when the premises were open, the contractual monthly rent being £9,000 inclusive of VAT.
- 4.10 AM stated that in December 2020 the Applicant received an unspecified grant at which point it transferred £8,000 (presumably to the Respondent).
- 4.11 AM said that keeping track of monies owed to the Respondent was difficult because the Respondent provided no invoices or statements of accounts. AM mentioned that a fee would be charged if he requested an invoice or statement of accounts.
- 4.11 AM also confirmed that the Applicant received a “bounce back” loan in the sum of £50,000 in June 2020 the majority of which was used to help start up the business again as funds had reduced during the covid closure period. Some of the £50,000 loan was used to help start paying back the Respondent.
- 4.12 The Applicant received a further £18,000 grant in December 2021 whereupon the Respondent was immediately paid £8,000. The balance was used to cover costs due to loss of trade because the government was advising the public not to go out according to the Applicant. AM said that many bookings in December 2021 were cancelled as a consequence of government advice.
- 4.13 AM confirmed that the business reopened on 19th July 2022 without restrictions but the business landscape had changed substantially adversely affecting its trade.
- 4.14 AM explained that Friday evenings were no longer busy due to so many working from home and two large companies nearby to the Applicant’s public house closed their main offices meaning that its business had become fully dependant on the local residents.
- 4.15 AM said that the summer of 2022 was good, helped by good weather and the business is making a small profit notwithstanding the war in Ukraine and rises with the cost of living.
- 4.16 The Applicant was securing a finance loan to build a hotel above the public house to provide 11 rooms and which was due for completion by mid November 2022.
- 4.17 The Applicant stated that the business is viable and is confident that it will continue to remain viable.
- 4.18 The Applicant requested relief from payment but did not quantify the sum, instead supplying a business bank statement for the period 3rd August 2022 to 2nd September 2022 which has a closing balance of £22,671.85.

5.0 *The Respondent's Proposal*

- 5.1 ML provided a background and description of the property to which the Respondent is Landlord and owner of the freehold interest.
- 5.2 ML highlighted that according to the Applicant's website this public house has the largest beer garden in Wimbledon.
- 5.3 ML explained that Amtel Ventures Limited are also linked to Amtel Sheem Limited (ASL), a group company arrangement, ASL having public house premises in Colliers Wood.
- 5.4 ML stated that both companies are loss making and supported by Director's loans and bank loans.
- 5.5 ML provided a table of the financial years 2020 – 2022 showing creditors amounts due and total liabilities.
- 5.6 The table was not supported by copies of the actual accounts.
- 5.7 ML provided details of the terms upon which the premises are occupied, the Applicant having taken a 15 year term from 21st January 2019 at a commencement rent of £90,000 per annum exclusive.
- 5.8 In response to the Applicant's Proposal, ML concurred there is no dispute as to the validity of the application made to the RICS.
- 5.9 ML contended that the Applicant could have mitigated losses by operating a takeaway service from the premises rather than throwing away fresh produce.
- 5.10 ML went on to say that as of 25th June 2020 the government announced plans relaxing rules for England and Wales such that pubs and restaurants could utilise outdoor spaces, a fact he says was not mentioned by AM.
- 5.11 ML considered that the government would have prevented public houses from opening if it thought they were unsafe for customers and considers staff stranded abroad with their families as a disadvantage of employing people from abroad.
- 5.12 ML highlighted another mitigating factor in the government's "Eat Out to Help Out" scheme which was available to the Applicant from 3rd to 31st August 2020 such that customers could get a 50% discount on food and non-alcoholic drinks, the rest funded by government.
- 5.13 ML stated that the "Rule of Six" only prevented more than 6 non-family members gathering. ML reiterated the benefit of having a large beer garden with outside seating and suggested that both garden and forecourt could have been utilised on a timeslot paid basis for customers.
- 5.14 ML took issue with the Applicant's assertion that pubs are not restaurants principally because pubs serve food for consumption on and off the premises.

- 5.15 ML suggested the Applicant may have mitigated its losses during the covid period by doing promotions for its business.
- 5.16 ML advised that the Applicant was in arrears of rent before the Coronavirus outbreak and provided a rent invoicing/payment schedule showing the amount owed to be £9,372.53 as at 21st March 2020. The schedule showed that the first rent payment made by the Applicant during the “protected period” was on 16th October 2020.
- 5.17 ML criticised AM for blaming the Respondent for not fully understanding how much rent the Applicant owed the Respondent. ML stated that is not the obligation of the Respondent Landlord.
- 5.18 ML stated that the protected rent debt arrears total £81,506.65 before interest is applied.
- 5.19 ML highlighted the “small profit” referred to by AM within his Proposal but contended that has only been possible in reality because the Applicant has not paid the rent.
- 5.20 ML concluded that the business is effectively only viable provided the Applicant does not have to pay any rent.
- 5.21 ML advised that the Respondent’s accounts show net assets of £120,648 for the year ending 31st October 2021. Creditor amounts due after more than one year totalled £2,843,374 of which £1,543,374 are bank loans falling due in more than 5 years. Other creditors total £1,300,000 but no details have been provided.
- 5.22 ML stated that the Applicant told him a bridging loan was taken out to purchase these public house premises although no detail of the bridging loan is provided.
- 5.23 ML confirmed that verbal agreements had been reached between the Applicant and Respondent on repayments and that the Applicant had been paying £2,500 per month up until January 2023.
- 5.24 ML stated that the Applicant requested to pay only 50% of the rent owed during the covid period which was rejected by the Respondent.
- 5.25 The Respondent considers the Applicant’s business unviable but made a Proposal that the Applicant pay the outstanding balance as at 14th December 2022 of £62,996.78 over a period of 70 weekly instalments together with default interest under the terms of the lease.

6.0 *Applicant’s Amended Proposal*

- 6.1 AM accused ML of acting as Advocate for the Respondent by seeking to show his business in the worst light.
- 6.2 AM set out that he was born into the catering industry, his family owning the oldest running restaurant in Wimbledon, hence his ability to take a lease of the subject premises at 222 Durnsford Road.

- 6.3 AM confirmed that he is also part owner of the site in Colliers Wood referred to by ML. He has a 40% stake in the business, is Managing Director, but does not hold a majority shareholding.
- 6.4 AM advised that the most recent filed accounts show The Woodman Public House as “just about breaking even” with the William Morris Public House at Colliers Wood producing a small profit.
- 6.5 AM agreed with ML that both businesses required substantial investment at the outset.
- 6.6 AM advised that the landlord for the William Morris premises agreed to halve the cost of the rent payable whilst closed and arrears to be paid over a two year period without interest being added.
- 6.7 AM stated that the landlord did its due diligence before granting a lease, during which period he was also required to provide a business model.
- 6.8 AM contended that The Woodman Pub, with a bed and breakfast (B&B) facility, would have been a profitable business had it not been for Covid and a loan that was going to be used to develop the B&B was cancelled.
- 6.9 AM stated that the site as a stand-alone pub without a B&B would only just about break even and he said he was happy to provide forecast and projections to assess the viability of his business.
- 6.10 AM said it did not do take away food during Covid largely because as a public house, he classed food as a secondary part of the business to enable further wet sales.
- 6.11 AM employed two chefs, one of which was Polish and who decided to go back to Poland, and the other was classed as a health risk whilst Covid was at its peak. AM continued that many other staff did not want to leave their homes during the Covid period.
- 6.12 AM said that the food it provided was not a big seller for the local demographic and, even if it could employ a chef, the running costs for delivery would outweigh the revenue. The example he provided was Deliveroo who take a 30%-35% commission.
- 6.13 AM wanted to save costs as a priority so as to survive.
- 6.14 AM did not believe website advertising would provide a good return on its investment and delivering leaflets through lockdown was not a done thing.
- 6.15 AM said the Local Licensing Officer advised him to stop using the beer garden following complaints from residents. He had to stop within two days of opening the beer garden.
- 6.16 AM stated that his staff had lived in the country for several years when he hired them and the climate following Brexit and Covid made them decide to leave for

- their home country. AM confirmed that he hired people based on experience and ability, not nationality.
- 6.17 The “Eat Out To Help Out” scheme was popular Monday-Wednesday, but not on other days, according to AM.
- 6.18 The “Rule of Six” scenario proved unpopular according to AM because the local demographic is more senior and they did not want to take risks during that period.
- 6.19 AM questioned ML’s statement that witnesses described his business as not being very busy.
- 6.20 AM refuted ML’s contention that the Respondent had been firm but fair in his approach to the Applicant. AM took a contrary view, citing a threatening of legal action and eviction during the Covid period.
- 6.21 AM has again confirmed that he feels the Applicant and Respondent should share the burden of the Covid period on a 50:50 basis.
- 6.22 The Applicant has taken the view that neither party is to blame for the associated costs due to Covid. AM maintained that whilst he was open for trade, he maintained payments of £2,500 each week when many other businesses chose not to pay their landlord.
- 6.23 AM maintained that he had been a fair tenant seeking a fair resolution to this dispute. AM agreed with ML’s protected rent debt figure but added interest producing the sum of £64,295.02.

7.0 *Respondent’s Amended Proposal*

- 7.1 ML insisted that he did not intend to portray the Applicant in its worst light, but present his view objectively.
- 7.2 ML felt it important to consider the Applicant’s rent payment record prior to and during the protected rent debt period. In addition, he felt it necessary to consider payments post-Covid, alongside the lack of financial support available to commercial landlords generally.
- 7.3 ML expected that traditionally tenants would ensure their rent was paid promptly, not expecting the landlord to accommodate how long it might take for a tenant’s business to become profitable.
- 7.4 ML speculated that the only reason The Woodman Pub is “just about breaking even” is because of the total rent debt owed to the Respondent.
- 7.5 ML suggested that if AM considered that the costs incurred during Covid should be split equally, then AM would have no issue with giving the Respondent 50% of the government grant received by the Applicant.

- 7.6 ML accepted that Covid caused difficulty for everyone, but the Applicant is to blame for failing to pay enough rent since December 2019 to clear rent arrears. In support of this assertion he attached an updated Schedule of Arrears.
- 7.7 ML made an Amended Proposal on behalf of the Respondent requesting the Applicant's Guarantor to the lease to pay the whole of the protected rent debt together with interest.

8.0 *Relief from Payment*

- 8.1 The Applicant has provided a reminder of chronological timings for opening dates and government operating restrictions imposed during the period 21 March 2020 to 18 July 2021.
- 8.2 AM highlights the staff issues, operational difficulties and details of grants received during the 'protected period'.
- 8.3 AM maintained that his business remained viable but in support of the application for relief from payment only supplied a business bank statement to the Formal Proposal relating to the period 3 August 2022 to 2 September 2022 with a closing balance of £22,671.85.
- 8.4 ML had limited sympathy with AM, criticising the Applicant for its staff issues and failing to make best use of the premises, notably the beer garden and a take-away service.
- 8.5 ML suggested that the only way that the Applicant's business could be considered viable was by ignoring the rent debt owed to the Respondent.
- 8.6 In assessing the viability of the business of the Applicant tenant I am directed to consider various criteria as set out by Section 16(1) of the CRCA.
- 8.7 In addition to the premises at 222 Durnsford Road, the Applicant has a 40% stake in the William Morris public house at Colliers Wood.
- 8.8 Unfortunately, I have not been provided with either audited or management accounts of the subject premises at 222 Durnsford Road in the first instance, to assist my assessment of the viability of the business pre and during the 'protected period'.
- 8.9 I am consequently unable to consider the full assets and liabilities of the Applicant including key financial information.
- 8.10 The details of rental payments made by the Applicant show irregular payments to the Respondent pre-Covid and a rent debt at the start of the 'protected period' of £9,372.53.
- 8.11 During the 'protected period' the Applicant made its first rent payment on 16 October 2020, being the sum of £2,500.

- 8.12 At that point, the Applicant tenant had accrued almost seven months of rent debt notwithstanding that public houses could re-open on 4 July 2020 and a bounce-back loan of £50,000 had been provided to the Applicant in June 2020.
- 8.13 AM stated within his Proposal that a weekly amount of £2,500 was paid to the Respondent whenever the business was open for trade. AM confirmed in his Proposal that the subject premises were open for trade from 4 July 2020 but he made no rental payments to the Respondent from that date until 16 October 2020.
- 8.14 AM has provided insufficient evidence in support of his Proposal on behalf of the Applicant and I am consequently unable to consider the viability of the Applicant's business.
- 8.15 I dismiss the Applicant's Proposal.
- 8.16 An assessment of the Respondent's solvency under Section 16(2) of the CRCA is not possible on the information provided, but its Amended Proposal is for the Applicant's Guarantor to pay the whole of the protected rent debt together with interest.
- 8.17 The parties to the dispute are the named Applicant and Respondent. The Guarantor is not a named party to this dispute and my Award will refer to the named parties only.
- 8.18 The Respondent will not be granted relief from the protected rent debt owed of £62,996.78.

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 Thursday 10th August 2023.

11.0 *Award*

11.1 I, Simon Stuart Gouldbourn, Award as follows:

- (a) The Applicant will pay the protected rent debt of £62,996.78 over 18 months, i.e. £3,499.82 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: 13th July 2023