

FINAL AWARD

IN THE MATTER OF AN ARBITRATION

under the

COMMERCIAL RENT (CORONAVIRUS) ACT 2022

Between

[REDACTED]

(applicant)

and

[REDACTED]

(respondent)

In respect of

[REDACTED]

MANCHESTER

[REDACTED]

The Parties

1. I was appointed by the President of the Royal Institution of Chartered Surveyors ("RICS") in the capacity of Arbitrator to deal with this dispute. This is an appointment under the provisions of the Commercial Rent (Coronavirus) Act 2022 ("CRCA").
2. The dispute relates to the question of whether or not the applicant is entitled to receive relief from the payment of a Protected Rent Debt ("PRD") under the provisions of this Act.
3. The applicant is [REDACTED] Limited who are the tenant of the premises known as [REDACTED] Manchester [REDACTED]. They are successors to the original tenant, [REDACTED] Limited.
4. The application for the appointment of an Independent Assessor actually shows the applicants name as [REDACTED] Limited, of the same address.
5. The respondent is named as [REDACTED] of [REDACTED], Manchester [REDACTED]. They are the Landlord of the property although the lease is in the names of [REDACTED] and [REDACTED]. In the absence of any advice to the contrary I take these two so named as being the same on the application.
6. The applicant is represented by Mr [REDACTED] of [REDACTED] who is a solicitor.
7. The respondent was originally represented by [REDACTED] of [REDACTED] of [REDACTED], Manchester [REDACTED].
8. I was advised by e-mail on 7 December 2022 which I received from [REDACTED] that [REDACTED] had ceased trading, and that [REDACTED] Solicitors were then acting as the relevant contact for the Landlord (Respondent).
9. Subsequently by e-mail dated 8 December 2022 [REDACTED] of [REDACTED] Solicitors Limited of [REDACTED] advised me that he would be acting on behalf of the respondent.
10. Upon my appointment as Arbitrator I wrote to the representatives of the parties, [REDACTED] and [REDACTED] as noted above on 29 November 2022. Therein I set out a number of matters relating to the procedure to be adopted.
11. This Arbitration relates to an application made by the applicant to the Dispute Resolution Service of the RICS, as a duly authorised body for the purpose of appointing an Arbitrator to deal with the matter of relief of payment of a PRD. This is in pursuance of the provisions of Section 10 (4) of the CRCA.
12. As noted above [REDACTED] had advised myself that he was acting on behalf of the Respondent in this matter, and thereby all correspondence relating to same has subsequently been with him as well as [REDACTED].
13. There have been several delays in being able to take this matter to a conclusion, attributable to various factors. One of these has been the change of representative of the Respondent, whereby [REDACTED] had to take over the case.

14. By e-mail dated 21 December 2022 [REDACTED] confirmed that he had received a full set of documents relating to this case.
15. I wrote to the parties, by e-mail, on 20 March 2023, as I had not heard in response to my e-mail of 22 December 2022 inviting views on a timetable. I thereby suggested that all relevant documentation should be received by me by Thursday 6 April 2023. I prepared Draft Directions at that point.
16. [REDACTED] confirmed to me, by response, that he did not intend to produce any more documentation other than that which had been submitted to the RICS.
17. I did not hear from [REDACTED].
18. The suggested date of 6 April for submissions came and went, with nothing received from [REDACTED].
19. By e-mail of 11 April 2023 I wrote to both Messrs [REDACTED] and [REDACTED], noting that I had not heard from the latter. In that e-mail I forwarded a copy of my Draft Directions as noted. In that I suggested the revised date for submissions as being 28 April 2023.
20. In response to that on the same day Mr [REDACTED] advised that he appreciated the urgency and advised that he would chase his client that day and revert within the next day or so.
21. Nothing further was received from Mr [REDACTED] after that e-mail, and I wrote to the parties once again on 12 May advising that as I had not heard anything further in relation to the timetable set out in the Draft Directions, I would assume that no further proposals would be put forward by the parties unless I heard from them by close of business on Monday 15 May.
22. In response Mr [REDACTED], on the same day, advised that he had nothing further to put forward to me.
23. I heard nothing further from Mr [REDACTED]. Thereby, as noted in my e-mail of 12 May to the parties I have proceeded ex parte.

Appropriate Matters to Be Dealt with Under CRCA24

24. It is a requirement that any application for a Dispute to be resolved under the CRCA it must be confirmed that there is a "tenancy".
25. On this point I have been supplied with a copy of the lease dated 1st July 2016, as noted above. Mr [REDACTED] has advised me that the lease has not been assigned by the original tenant but he confirms that tenant to now be [REDACTED] Limited.
26. The latter is the applicant in this case.
27. I am satisfied that a tenancy exists.
28. I must consider the protected rent debt. This relates to the matter of relief thereof, from payment.
29. The protected rent is subject to two matters:-
 - a. That the tenancy was adversely affected by Coronavirus; and
 - b. That the rent is attributable to a period of occupation by the tenant for, or for a period within, the protected period applying to the tenancy.

29. The protected period is effectively a timescale beginning on 21 March 2020 and ending on 18 July 2021, or an earlier date. This is as is provided for under Section 3(2) of the CRCA.
30. The application states that the period for which PRD is claimed is November 2020 to May 2021. Accordingly therefore the PRD falls within this period.
31. The question of the tenancy being adversely affected relates to the existence of the Pandemic of the Coronavirus epidemic, and therefore by virtue of it being subject to a closure requirement. In this context the premises were required to be closed during the relevant period from time to time. Therefore the operation of the business was adversely affected.
32. Turning to the question of the Protected Rent Debt then the rent attributable for the period of occupation for a period within the above timescale would fall into the category of being protected.
33. The PRD which is claimed in the application is in the sum of £10,500 including VAT.
34. I must consider also whether or not the parties reached an agreement. On this point they have clearly failed to do so and hence this matter has been referred to Arbitration.
35. As above it will be seen that there has been little participation in the proceedings of this Arbitration by the landlord and their representatives.
36. It is also necessary to consider the viability of the business. There is no direct guidance within the CRCA on this point.
37. However, the matter of viability of a business largely revolves around its future trading prospects, and whether or not it is still capable of generating a profit. If the answer to the latter is in the positive then clearly the business is still viable.
38. Documentation has been put to me which includes bank statements, financial returns to Companies House, loan details, management accounts, and notes relating to the financial details of the applicant, for 3 years ended 2021, 2022, and 2023.
39. Therefore it is clear to me that the business is viable, as it has continued trading as is evidenced. It appears to me also that the business was viable prior to the Pandemic, that the latter caused it to suffer in terms of trading, but that subsequently it has recovered and continues to be once again viable.
40. I cannot but come to any other conclusion therefore that the business is viable.
41. In considering how any relief from payment of a PRD is concerned, Section 14 of the CRCA applies, when read in conjunction with Section 13 (5) of the CRCA.
42. Taken together these also ask that the Arbitrator considers any financial proposal put forward by either party, under section 11 of the CRCA.
43. In this context no documentation at all has been provided to me on behalf of the landlord.
44. However, the applicant has put forward a formal proposal which is attached to a letter dated 24 August, which in turn has as an attachment to it the application to the RICS for the appointment of an Arbitrator.
45. This formal proposal is made under the provisions of Section 11 (1) of the CRCA, whereby the applicant proposes to pay £500 in addition to the monthly rent payments of £3,000 (thereby being monthly

payments of £3,500) for a period of 21 months to settle the arrears of £10,500 which have accrued between November 2020 and May 2021.

46. Within that formal proposal the applicant makes reference to the provisions of Section 11 (3) of the CRCA and that supporting evidence is produced. This formal proposal further refers to the applicant's viability, in the context of Section 16 (1) of the CRCA, demonstrating ability to afford these extra payments.
47. That formal proposal has been signed by [REDACTED], Solicitor, on behalf of the applicant, together with a Statement of Truth.
48. The parties were invited to make any further proposals which they deemed appropriate, but neither has done so in these proceedings.
49. Therefore, the formal proposal put forward, as noted above, is the final position of the applicant.
50. I must also take into account the requirements of Section 15 of the CRCA. This requires that any Award which is made should be aimed at preserving and/or restoring and preserving the viability of the tenant's business. This must also be consistent with serving the landlord's solvency.
51. I am entirely satisfied that the business is viable, and thereby passes this test.
52. The landlord has not participated at all in these proceedings, and has not produced any evidence or documentation to demonstrate his position. In the absence of this I must take it that the landlord remains solvent.
53. Section 15 also requires that the Arbitrator establishes that the tenant is capable of meeting his obligations as regards the payment of the PRD.
54. On this point I am entirely satisfied that the applicant is capable to meeting the PRD payments as set out in the formal proposal as noted above.

Findings

55. The CRCA requires that relief from payment of a protected rent debt should be granted on the proviso that:-
 - a. the property is occupied under a business tenancy;
 - b. there is protected rent debt consisting of unpaid protected rents; and
 - c. the tenant's business is viable or if not, would be viable if granted relief.
56. I am satisfied that the tenancy qualifies as a business tenancy under the Act.
57. I am satisfied that there is a protected rent debt.
58. I am satisfied from the information to hand that the tenant's business is viable.

Relief From Payment

59. As the tests set out above are all satisfied by virtue of the fact that there is a PRD, it follows therefore that the applicant should be given any relief from payment of same.

Decision

60. I find that the applicant's case is proven and that the provisions of the formal proposal as set out and noted above be adopted.

Costs

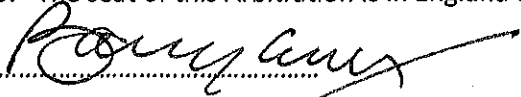
61. Section 19 (7) of the CRCA provides that each party pays its own costs in the Arbitration. However, I must also make an Award requiring that the respondent reimburse half of the Arbitrator's fees which have been paid by the applicant.
62. However, I am also empowered to make an Award as to Costs in the case, taking account of the conduct of the parties.
63. On this point I find that the landlord, in the absence of taking any part in the proceedings, and not producing any documentation or evidence in any respect, has failed to comply with the provisions of the CRCA in the context the PRD.
64. Therefore I find that there have been costs incurred in dealing with this matter which otherwise might have been avoided.
65. I therefore find that the respondent shall meet its own costs in the matter.
66. The respondent shall also reimburse the applicant 100% of the costs of this Arbitration.
67. The applicant paid the sum of £750 to the RICS, who hold the money in order to discharge my fees. This is the sum which the respondent shall reimburse to the applicant.
68. In addition the applicant paid an application fee to the RICS. The sum shall also be reimbursed by the respondent to the applicant.
69. The conduct of the respondent has been one of non-co-operation throughout these entire proceedings. This has incurred time and cost in dealing with the Arbitration.
70. I therefore find that the respondent shall reimburse the applicant his costs which have been incurred since the application to the RICS was made for the appointment of an Arbitrator.
71. The parties shall endeavour to agree this sum, but if they fail to do so then these will be taxed, and my costs in dealing with same, will be chargeable to the respondent. These will be calculated in the sum of £350 plus VAT.

Publication of the Award

- 71. Pursuant to Section 18 (2) I am required to publish this Award.
- 72. This will be published by the RICS and is to be in an anonymised format.

Seat of the Arbitration

- 73. The seat of this Arbitration is in England and Wales


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Barry G Crux FRICS ACI Arb

Dated 30 May 2023.