



Lights, Camera, No Action: No Reprieve for Commercial Tenants for Covid Rent Arrears

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Rent arrears during Covid has been a hard battle between landlord and tenants. There have been a number of cases where the Courts have refused to concede on contractual laws. Two recent cases have been dismissed – *London Trocadero (2015) LLP v Picturehouse Cinemas Ltd* and *Bank of New York Mellon (International) Ltd v Cine-UK Ltd*.

Our [previous article](#) discusses the *London Trocadero* case in particular.

The case of *London Trocadero (2015) LLP v Picturehouse Cinemas Limited* was initiated in October 2020 by the landlord in respect of rent and service charge arrears. The tenant owed the landlord £2.9 million and tried to argue that the reason for non-payment was due to the fact that the cinema had to close during lockdown.

The Court granted summary judgment to the landlord despite the tenant being unable to use the premises and refused to accept whether a term implied into the lease allowed for rent and service charges to be suspended during the period when it was illegal for cinemas to be open. The High Court held that the use of the premises as a cinema was not fundamental to the basis on which the parties entered into the lease.

The tenant however appealed the above decision and this was heard in the Court of Appeal on 21-23 June 2022. Judgment was handed down on Thursday and the Court of Appeal held that there was no failure of the basis upon which rent was due.

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' included financial damage.

The Court of Appeal in the above cases agreed with the landlords that the rent paid was in consideration for the exclusive use of the premises rather than an assumption that the premises could be lawfully used as cinemas as put forward by the tenants.

The judgment is another example of the failure of tenants' arguments to avoid paying rent during the pandemic and perhaps time for tenants to admit defeat. The outcome will be welcome news for commercial landlords and provides some certainty surrounding the issue. Practically speaking reaching an agreement with the landlord

remains and is likely to be the most commercial solution.

Following the moratorium on commercial evictions being lifted in March, the Commercial Rent (Coronavirus) Act 2022 introduced the arbitration scheme for those landlords and tenants who were unable to reach an agreement as to the unpaid rent or debts that had accrued. The scheme is to run until 24 September. Any tenants struggling to reach agreement with their landlord should perhaps consider utilising this process whilst it is available as so far, not many tenants have.

If you need any advice regarding this, do reach out to one of our Team and please contact our expert [property litigation](#) lawyers by emailing online.enquiries@la-law.com.