

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

BETWEEN:

Wexford Inns Limited

Applicant

and

Wellington Pub Company plc

Respondent

FINAL AWARD - OLD MANOR INN

Introduction

1. This is the Final Award ("**Final Award**") in respect of an arbitration ("**the Arbitration**") pursuant to the Commercial Rent (Coronavirus) Act 2022 ("**CRCA**" and/or "**the Act**"). Unless otherwise stated, reference to section numbers within this Award, relates to sections of CRCA.
2. I was appointed as an arbitrator in respect of six arbitrations by CCODR following six referrals to arbitration ("**the Referrals**") by Wexford Inns Limited ("**the Applicant**") on 23 September 2022, pursuant CRCA. The Applicant is represented by Protected Rent Debt.
3. The Respondent in these matters is Wellington Pub Company PLC ("**the Respondent**"). The Respondent is represented by Criterion Asset Management.
4. This Final Award is in relation to one of the Referrals. It relates to the property known as Old Manor Inn, Walton-on-Thames, KT12 2NZ ("**the Referral**").

5. Upon appointment, I issued directions in respect of the conduct of the Arbitration on 30 September 2022 ("**Initial Directions**").
6. On 7 October 2022 at 10:54, I received an email from Ms Cornelius on behalf of the Respondent. This contained a document titled "Respondents Directions Response" ("**the Respondent's Directions Response**") and a number of documents on which the Respondent relies. The Response can be summarised as being a challenge to the validity of my appointment ("**the Challenge**") and is set out in more detail at paragraph 6 of the Respondent's Directions Response. The Challenge is formed of two grounds which are set out in more detail below.
7. On the same day at 12:08, I received a second email from Mr Wright. I was unclear as to what Mr Wright's email sought.
8. Accordingly, in response to the Respondent's Directions Response and Mr Wright's email, I issued further directions ("**Further Directions**") on 7 October 2022. The Further Directions sought submissions from both the Applicant and the Respondent (together "**the Parties**") as to the resolution of the Preliminary Matters.

The First Ground

9. The basis of the first ground ("**the First Ground**") of the Challenge is that the following four of the six Referrals relate to properties where the Applicant is not the tenant of the relevant lease.
 1. *Green Dragon Hotel, Rushden, NN10 8DZ*
 2. *Old Manor Inn, Walton-on-Thames, KT12 2NZ*
 3. *Queen's Arms, Addlestone, KT15 1SF*
 4. *Red Lion, Isleworth, TW7 6QJ*
10. The Respondent therefore argues that these Referrals do not comply with the provisions of section 2(1)(a) CRCA. This appears to me to be on the basis that the

tenant, according to the Respondent, is not a party to the relevant referral and thus these proceedings.

11. The Respondent provided me with copies the relevant tenancies.
12. Accordingly, the respondent submits that I do not have jurisdiction to consider these Referrals because the Applicant is not the tenant under the relevant business tenancy. The Respondent submits that these Referrals should be dismissed.
13. Section 30 of the Arbitration Act 1996 (“AA”) provides that I have the power to rule on matters of substantive jurisdiction.
14. In the Further Directions, at paragraphs 10 and 11, I asked the Applicant and Respondent to make submissions on a number of relevant issues in respect of the Respondent’s jurisdictional Challenge.

“10(i) ...clarify what you are asking of me;

15. On 11 October 2022, the Applicant responded to the Further Directions. In respect of the Applicant submitted

“a) The name Mr Paul Nolan should be on the directions for those cases where he is the Tenant and awards given in the name of the Tenant. Logically the names of the limited company should appear on directions where they are the tenant and awards given.

b) We are not suggesting a change to the applications for arbitration.”

16. This issue did not require a response from the Respondent.
17. The Applicant only asks me to amend the “*directions*” and expressly does not invite me to amend the name of the applications for arbitration. I bore this in mind when considering the Respondent’s Challenge and in respect of the other areas for submissions below.

18. In doing so, I consider that the status of my Initial Directions and Further Directions is merely that of providing an administrative framework and timetable for each party to comply with and for me to administer the process of the Arbitration. The Directions themselves do not amount to an substantive decision or award in respect of the legal entities of the parties to the Arbitration.

“10(ii) In respect of your answer to 10(i) immediately above, what power or provision do you rely on that you say gives me the power to do what you seek?”

19. In its response, the Applicant did not identify any rule or power. The Applicant submitted *“you are an appointed arbitrator under the Act and can change, amend or re-issue your directions to ensure you uphold the Arbitration principles”*.

20. The Respondent’s Response to Further Directions did not make submissions on whether or not I had the power to order what the Application sought, and instead repeated its substantive position made in its response to my Initial Directions.

21. I consider that the Applicant’s focus in its answer relates to the directions and not to the substantive parties details. In addition to the Applicant *“not suggesting a change to the applications for arbitration”*, it has not drawn to my attention any rule or power for me to do so.

“10(iii) I note that the referrals themselves (as opposed to what is listed in my Initial Directions) made via the CCODR form in respect of the Green Dragon, Old Manor Inn, Queen's Arms and Red Lion state "Wexford Inns Ltd" as "Company name" and are signed with "Position held (if on behalf of a company): Director". Please provide your submissions in this regard”.

22. In respect of iii) above, the Applicant submitted *“Mr Nolan is juggling a lot of businesses and clearly did not set out to intend to mislead anyone”* The Applicant further submits that it is *“unreasonable for the Respondent to imply that the applications and or formal responses misled to the extent they are incapable of being*

arbitrated on simply because an extra name appears on them.” And that the Respondent has not be misled or prejudiced because it is already aware of who the tenant is in respect of each property. The Applicant argues that “it is common for many people wear many *“hats”*”.

23. The Applicant submits that until the Referrals were made, the Respondent corresponded in a *“grouped way”* and raised no issue with the naming of the parties. The Applicant submitted that the Respondent previously challenged the *“Notification of Intention”* to submit a referral in respect of the *“Three Cups”* premises but not of those now challenged. The Applicant provided me with an email in this regard on which it relies.
24. The Respondent submitted that it is award that Mr Nolan is a director of Wexford Inns Ltd. It says that is why it responded that the email address used. The Respondent submitted that the distinction between Mr Nolan and Wexford Inns is an important one in the context of an arbitration.
25. I have borne in mind that the Applicant is *“not suggesting a change to the applications for arbitration”* and has not drawn my attention to any rule or power for me to do so even if it was. Therefore, it is not a matter of reasonableness or whether or not the Respondent has suffered any prejudice or for me to issue new directions. In my assessment, it is a matter of whether or not it is within my jurisdiction to decide the matters relating to the four properties where the Applicant does not hold the lease.
26. The Referral to arbitration has been made in the name of Wexford Inns Limited. My power is therefore restricted to deal with matters brought by Wexford Inns Limited against Wellington Pub Company plc, in so far as they relate to the properties set out in the Referrals.
27. Because I am not asked to change the applications and no rule or power has been drawn to my attention enabling me to do so even if asked, I find that I have no jurisdiction to do so.

“10(iv) I note the header of the "Formal proposals" submitted state "Paul Nolan Wexford Inns LTD" as the Claimant and that Claimant is listed in the singular? Please provide your submissions as to the presence of both Mr Nolan's name and Wexford Inns Ltd.”

28. The Applicant submits *“The arbitrator principles mean they cannot give an award to a party who is not the tenant therefore any extra name in the formal proposal is to be ignored in any event, so use of the singular would continue to make sense.”*

29. The Respondent’s submissions amount to a repetition of its response to my Initial Directions.

30. My findings above in respect of jurisdiction are repeated. Because I do not have jurisdiction to deal with a matter from a non-party (Mr Nolan) I cannot go on to consider the Referrals or any material within them because I have no power to do so.

“10(v) What relevance, if any, do you say there is to the fact that a reference to arbitration under the Commercial Rent (Coronavirus) Act 2022 must be made by 23 September 2022? Please provide your submissions as to whether or not the request you have made, if successful, might be said to amount to a new reference in the name of the new applicant, made after that date?”

31. The Applicant submits *“A reference to arbitration for a business run by Mr Nolan was made by 23 September 2022, the Respondent is clearly not misled or put to any hardship or inconvenience by the listing of names and objects only now to the extra name which we say can be ignored in any award given.”*

32. The Respondent submits that new referrals in Mr Nolan’s name should be dismissed as the date for submission of an application has now passed.

33. Merely because a business is run by Mr Nolan, does not alter the fact that the Applicant has its own legal personality in English Law which is quite separate from Mr Nolan as a separate legal entity.

34. Because the date for making a referral has passed, it is not open to Mr Nolan to submit a new referral.

Conclusion

35. Accordingly, all six Referrals remain in the name of Wexford Inns Limited.

36. For all of the reasons set out above, I have no jurisdiction to determine referrals where Mr Nolan holds the lease. This is because, Wexford Inns Limited is the party to this Arbitration.

37. As the Old Manor Inn is one of the properties where the lease is in the name of Mr Nolan and not Wexford Inns Limited, I determine that have no jurisdiction to hear this matter pursuant to section 2(1)(a) CRCA, namely that the Applicant is not the relevant tenant to make a referral under CRCA.

38. Accordingly the Referral in respect of the Old Manor Inn is dismissed.

Publication of this Award

39. Pursuant to section 18(2), I am required to publish this award. I intend to publish the award on the CCODR website. I have formed the provisional view that the award contains no commercial information which ought to be redacted from the award pursuant to section 18(4). I will therefore publish the award in full on the CCODR website unless either party indicates to me by 4pm on 31 October 2022 that they wish me to do otherwise in which case I will consider any submissions put forward in relation to that issue together with any evidence submitted in support of any such submissions.

AWARD

40. Now I, Robin Somerville, having carefully considered the submissions of the parties, hereby award and direct as follows:

(i) The Referral is dismissed.

41. MADE AND PUBLISHED by me, Robin Somerville at 5, Chancery Lane, London. WC2A 1LG, the seat of the arbitration, on 24 October 2022.

