

In the matter of an Arbitration

and in the matter of The Commercial Rent (Coronavirus) Act 2022

**Eastern Pearl Hall Hire
Ltd.**

Applicant

v

**Akbar Javed Ashraf &
Nazeen Ashraf**

Respondent

FINAL AWARD

1. I, Steven Devereux CEng FCIArb, was appointed as arbitrator in the above matter by CCODR following a referral to arbitration (“**the Referral**”) by Eastern Pearl Hall Hire Ltd. (“**the Applicant**”) on 26 September 2022, pursuant to The Commercial Rent (Coronavirus) Act 2022 (“**the Act**”)
2. The Applicant in this matter has referred a dispute for arbitration in respect of the commercial rent relating to the property at 250 Plymouth Grove, Longsight, Manchester, Lancashire, M13 0BG (“**the Property**”). The Applicant is represented by Usman Suleman, Sandhill Solicitors, 34-36 Wilmslow Road, Manchester, Lancashire, M14 5TQ.
3. The Respondent in this matter is Akbar Javed Ashraf & Nazreen Ashraf (“**the Respondent**”). The Respondent is represented by James Whittaker, Bermans Solicitors, 3rd floor, 1 King Street, Manchester M2 6AW.
4. The Referral is for an arbitration on the papers with no oral hearing.
5. The seat of the arbitration is England and Wales.
6. In the Referral the Applicant asserts that all criteria for eligibility for the resolution under the Act have been met.
7. I have been provided with the following documents (“**the Documents**”):
 - a. A formal proposal for resolving the matter from the Applicant, however not accompanied by a statement of truth as is required by s.12 (2) of the Act.

- b. A letter from the Applicant's solicitors to the Respondents solicitors dated 24 June 2022, referring to the Act and informing the Respondent of the Applicant's intention to refer the matter to arbitration.
8. The Referral identifies that the amount of rent arrears in dispute is £76,832.
9. I issued my Order for Directions 1 on 27 September, requesting the Parties to provide submissions and setting out a draft Timetable.
10. I issued my Order for Directions 2 on 29 September, which withdrew the previous Order and replaced it. This set out an alternative timetable and required submissions by Friday 28 October 2022. Subsequently the Parties requested an extension to the timetable, an alternative timetable had not been agreed by the day of this Award.
11. Mr Whittaker for the Respondent emailed a submission on 7 October setting out certain information relating to the rental agreement, the lease tenants and the applicant. He submitted that the Applicant is not the tenant and that their occupation of the property is in apparent breach of the rental agreement.
12. Mr Suleman for the applicant also emailed a submission on 7 October. This asserts that the arbitration should continue on the basis that the applicant is "*...clearly the primary user of the property for commercial purposes and a third-party beneficiary of the tenant agreement in any event*". He stated that the tenants run their business via the Applicant and that "*... the tenants and Applicant can essentially be assumed to be one and the same. Failing this, the tenants would both arguably be considered de factor directors and/or shadow directors of the Applicant under the Companies Act 2006*". No reference was made to explain which part of the Companies Act 2006 would allow the tenants to be considered as directors of the Applicant.

Analysis

13. The lease for the property was signed by two named individuals; Abdul Rauf and Manzoor Hussain. They are also shown as the tenants.
14. The tenancy agreement defines the lease period as starting on 1 September 2013 and ending on 31 August 2023. The lease was signed on 3 September 2013.
15. There is an entry at Companies House for Eastern Pearl Banqueting Halls Ltd¹, incorporated on 24 January 2006 and dissolved on 17 August 2010, using the property as its registered office.

¹ <https://find-and-update.company-information.service.gov.uk/company/10082748>

Manzoor Hussain was the only Director. This company was dissolved before the current lease was signed.

16. There is an entry at Companies House for Eastern Pearl Catering Ltd², incorporated on 23 June 2011 and dissolved on 22 November 2016, using the leased property as its registered office. This company existed at the time that the current lease was signed. The directors were Shanaz Hussain and Manzoor Hussain (lease signatory).
17. Eastern Pearl Hall Hire Ltd, the applicant, was incorporated on 20 March 2019, giving the address of the leased property as its registered office. There is only one Director listed, Irfan Tahir Rauf. He owns “75% or more” of the shares and voting rights.³
18. The lawyer for the Respondent has noted that there are two other companies with registered addresses at the property;
 - a. A R Catering Manchester Ltd⁴ incorporated 9 December 2016 – director: Abdul Rauf.
 - b. Pearl Decoration Ltd⁵ incorporated 20 March 2019– director: Manzoor Hussain.
19. Schedule 4, clauses 21, 22 and 23a of the Lease states that the Tenants are:

“(21) Not to use the Demised Premises or permit the same to be used other than for the purposes of the Tenant's own business and in any event not for any purpose whatsoever other than the Permitted User and to keep the same and cause the same to be kept open as such during all lawful hours and to conduct the business thereof or cause the same to be conducted in a lawful and orderly manner and so to manage and control the same or cause the same to be so managed and controlled so that nothing shall be permitted or omitted contrary to any statutory provision or requirement for the time being in force relating to establishments of that nature or whereby any nuisance or disturbance may be caused to the Landlord or any adjoining property.

(22) Not to assign underlet demise or otherwise part with possession of any part of the Demised Premises (here meaning a portion only and not the whole thereof) or to share occupation or possession of or hold on trust for another the whole or any part thereof for all or any part of the Term Provided That that no security of tenure shall be granted to any such occupant which will subsist for a period in excess of 6 months.

23(a) Not to assign underlet or charge the whole of the Demised Premises without the prior consent of the Landlord expressed in a deed prepared by the Landlord's solicitors at the cost of the Tenant such consent not to be unreasonably withheld or delayed.”

² <https://find-and-update.company-information.service.gov.uk/company/07679965>

³ <https://find-and-update.company-information.service.gov.uk/company/11894619>

⁴ <https://find-and-update.company-information.service.gov.uk/company/10519372>

⁵ <https://find-and-update.company-information.service.gov.uk/company/11894639>

20. The tenancy agreement was signed by two persons who were not directors nor listed as persons with significant control of the applicant. One of these, Manzoor Hussain, was a director of Eastern Pearl Catering Ltd, which existed at the time that the lease was signed. He is not an officer of the applicant. The other, Abdul Rauf, was not a director of the company that existed when the lease was signed and is not a director of the applicant.
21. The terms of the lease quoted above do not permit anything other than “*the Tenant’s own business*” to be operated from the premises. The two businesses owned by the Tenants that use the leased property as their registered office address, A R Catering Manchester Ltd and Pearl Decoration Ltd, are not parties to the arbitration.
22. Under s.1 of the **Contracts (Rights of Third Parties) Act 1999**⁶, the tenancy agreement does not confer any benefit on a third party unless the agreement expressly provides for this. S.1(3) states that:

(3) The third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.

23. I find that the applicant is not a 3rd party beneficiary to the contract, nor can the tenants and applicant be assumed to be one and the same.
24. Section 30 of the Arbitration Act 1996 provides that I have the power to rule on matters of substantive jurisdiction. As there is no contractual relationship between the Applicant and Respondent, and the Applicant’s use of the premises was in breach of the tenancy agreement, I find that I have no jurisdiction to determine the referral.

Publication of this Award

25. 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 Friday 4 November 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.

⁶ <https://www.legislation.gov.uk/ukpga/1999/31>

AWARD

26. Now I, Steven Devereux, having carefully considered the submissions of the parties, hereby award and direct as follows:

The Referral is dismissed.

27. MADE AND PUBLISHED by me, Steven Devereux at 100 St Paul's Churchyard, London, EC4M 8BU, the seat of the arbitration, on 28 October 2022.

A handwritten signature in blue ink, appearing to read 'S Devereux', with a large, stylized flourish on the left side.

Steven Devereux CEng FClarb