

In the matter of an Arbitration under The Commercial Rent (Coronavirus) Act 2022

Between:

The Heart Margate Limited

Applicant

v

Mr J G Chohan

Respondent

FINAL AWARD

Parties and the Premises

1. The Applicant in this matter, The Heart Margate Limited, is the tenant of the property at George Hotel, 44 King Street, Margate CT9 1QE. The Applicant is represented by Chris Wright of Protected Rent Debt. The Applicant seeks relief from the payment of £5,333.34 in protected rent debt in relation to the premises pursuant to the Commercial Rent (Coronavirus) Act 2022 ("CRCA").
2. The Respondent in this matter is Mr JG Chohan. The Respondent is representing himself and has not made any proposal nor engaged in this Arbitration process, despite being afforded every opportunity to do so.

Procedural Background

3. On the 22nd September 2022, the Applicant made a reference to arbitration ("the Reference") in relation to the matter of relief from payment of a protected rent debt arising under the Respondent's tenancy, the Reference being made pursuant to section 9 of the Commercial Rent (Coronavirus) Act 2022 ("CRCA"). The Reference was made to the Consumer Code for Online Dispute Resolution ("CCODR"), an approved arbitration body for

the purposes of section 7 of the CRCA.

4. The referral form:

- (a) Identified the protected rent debt of £5,333.34 comprising rent arrears;
- (b) Confirmed that the Applicant had served notice of intention to make this reference to arbitration on the Respondent on 6th July 2022 in accordance with section 10(1) of the CRCA;
- (c) Made a formal declaration confirming that the Applicant is not subject to any of the circumstances listed section 10(3) of the Act, namely:
 - i. there is no company voluntary arrangement which relates to any protected rent debt that has been approved under section 4 of the Insolvency Act 1986;
 - ii. there is no individual voluntary arrangement which relates to any protected rent debt that has been approved under section 258 of that Act; and
 - iii. there is no compromise or arrangement which relates to any protected rent debt that has been sanctioned under section 899 or 901F of the Companies Act 2006.

5. On 29th September 2022, I was appointed as Arbitrator via an email from Mr Aaron Moore from the Consumer Code for Online Dispute Resolution (“CCODR”). I accepted the appointment in an email dated 3 October 2022 copied to the Parties.

Directions

6. On 3 October 2022, I emailed both Parties with directions which were subsequently amended and thereafter amended directions were sent to both parties by email on the 10th October 2022. The amended directions sent were as follows:

(a) To the Applicant, requesting confirmation by 4pm on 7th October 2022;

i. when the Referral was served on the Respondent;

ii. that the Referral included the relevant documents;

iii. that the Referral and the Documents include everything relied on to the formal proposal pursuant to Section 11(1) of the Act.

iv. any amended proposal, following receipt of a response from the Respondent, if any, shall be sent to me and served on the Respondent, by 4pm 28 days after the Referral, excluding the date of Referral.

(b) To the Respondent requesting confirmation by 4pm on 7th October 2022 as follows;

i. if and when the Referral and Documents were served;

ii. by 4pm, 14 calendar days (excluding the date of service) after the Referral and Documents were served on you, the Respondent shall send to me and serve on the Applicant any formal proposal in response along with supporting documentation, pursuant to Sections 11(2) and (3); and

iii. Any amended proposal with supporting documentation, following receipt of any amended proposal from the Applicant, shall be sent to me and served on the Applicant, by 4pm 28 days after your first proposal, excluding the date of your first proposal pursuant to Sections 11(4) and (5).

7. The Applicant responded to the Directions on 18th October 2022 confirming that notification of the intention to make a referral to arbitration was sent to the Respondent on 6th July 2022.
8. The Respondent made no response to the Directions.
9. In an email on the 19th October 2022, the Applicant's representative requested that I proceed to issue my award pursuant to section 14 giving full regard to the remedy the Claimant had outlined in their formal proposal. Further, the Applicant's representative referred me to my powers to make an order for costs as per section 19 (5). The same request was made by email on the 20th October 2022. In an email, sent to both parties on the 23rd October 2022, I indicated that unless I received an email from the Respondent setting out reasons for this delay and any application for an extension of time by 4pm on Tuesday 25th October 2022, I shall proceed as the Applicant suggested. In an email, sent to both parties on the 28th October 2022, I indicated that I would proceed to consider and write the award noting that every opportunity had been afforded to the Respondent to address me on the delay and/or substance of the dispute.
10. My award is made on consideration of the following documents provided by the Parties.
 - a. Applicant's formal proposal and Applicant statement signed by Chris Wright dated 2nd September 2022. The Applicant's written statement has been verified by a statement of truth as required under section 12(2) of the CRCA; and
 - b. Documents identified within the Directions issued on the 10th October 2022.

Eligibility for grant of relief

11. The first issue to be determined is eligibility under section 13(2) of the CRCA which I now consider below.

12. Section 1(1) of the CRCA provides that the Act enables the matter of relief from payment of protected rent debts due from the tenant to the landlord under a business tenancy to be resolved by arbitration provided the following conditions are met to determine eligibility;

(a) the tenancy in question must be a business tenancy;

(b) the rent debt in dispute must be a protected rent debt;

(c) the Parties must not have reached agreement on the matter of relief from payment of the protected rent debt; and

(d) it must be the case that the tenant's business is viable or would be viable if given relief from payment of a protected rent debt.

Business Tenancy

13. The Applicant submits that the tenancy is a business tenancy. I have examined the lease and I am quite satisfied that this is business tenancy.

Protected Rent Debt

14. The proposals submitted by the Applicant confirm the protected rent debt figure as £5,333.34.

Parties must have not reached agreement

15. The Parties have failed to resolve the matter of payment hence the referral to arbitration.

Viability

16. Viability is not defined within the CRCA, but the BEIS Commercial Rent (Coronavirus) Act 2022 Guidance (issued under section 21 of the CRAR) states at paragraph 6.3: "In making the assessment of viability a key question is whether protected rent debt aside, the tenant's business has, or will in the foreseeable future have, the means and ability to meet its obligations and to continue trading.
17. The Applicant describes the business as being viable but the payment of the full amount of protected rent debt would leave the Applicant with insufficient working capital with which to fund operations going forward. Paying the full amount of protected rent debt would drain the Applicant much needed money diligently and prudently held to fund the business in uncertain times for the years ahead. Further, the Applicant submits that the rising costs of doing business have impacted the business, they are a reason why the Applicant cannot afford to make large monthly repayments for the rent debt.
18. The Applicant asserts that the business held valid business interruption insurance for the purpose of insuring against closure events such as pandemic and in the Applicant's opinion this demonstrates that the business run by the Applicant is viable, as it was properly insured. It is however well published that insurers failed to pay out and cover all the closures and loss of trade in the relevant period.
19. Further, the Applicant submits that the business was not in arrears to the Respondent prior to the pandemic and this too demonstrates that the business run by the Applicant is viable.

Section 14 of the CRA

20. Section 14 of the CRCA applies in considering how to resolve the matter of relief from payment of a protected rent debt as required by section 13(5) of the CRCA, which states as follows.

“Before determining what award to make the arbitrator must consider any final proposal put forward to it by a party under section 11. (3) of the CRCA. Where both parties put forward final proposals under section 11 of the CRCA:

(a) if the arbitrator considers that both proposals are consistent with the principles in section 15, the arbitrator must make the award set out in whichever of them the arbitrator considers to be the most consistent;

(b) if the arbitrator considers that one proposal is consistent with the principles in section 15 but the other is not, the arbitrator must make the award set out in the proposal that is consistent.”

Section 15 of the CRA

21. The principles which I must apply in resolving the matter of relief from payment are those in section 15 of the CRCA, which states as follows:

“(1) The principles in this section are—

(a) that any award should be aimed at—

(i) preserving (in a case falling within section 13(4)(a)), or

(ii) restoring and preserving (in a case falling within section 13(4)(b)), the viability of the business of the tenant, so far as that is consistent with preserving the landlord’s solvency, and

(b) that the tenant should, so far as it is consistent with the principle in paragraph (a) to do so, be required to meet its obligations as regards the payment of protected rent in full and

without delay”.

22. I now turn to consider final proposal put forward by the Applicant under section 11 of the CRCA for relief from payment.

Applicant's Proposal

23. The Applicant proposes:

(a) that the amount of Protected Rent Debt is assessed by the Claimant as £5,333.

(b) the amount of relief requested is £5,333.34

(c) if applicable, the Applicant be given relief from immediate repayment and time to pay any balance over 24 months; and

(d) order that the Respondent pay 50% (half) of the Arbitrators fee, pursuant to section 19 (5) of the CRCA

24. The Applicant states that, on face value, the Respondent holds considerable tangible assets and cash reserves, have suffered little or none of the impacts of the Applicant and are in a far greater position to endure financial shocks that would stem from writing off protected rent debt.

Respondent's Proposal

25. The Respondent has not made any proposal.

Relief Sought

26. I am conscious that I must be cognisant of the extent to which the Applicant can pay a protected rent debt considering, on the one hand, the viability of the tenant's business, and on the other hand, the solvency of the landlord. Accordingly a balance between the parties must be achieved.
27. In addition to this, I am cognisant of Section 15 (b) of the Act which states that "the tenant should, so far as it is consistent with the principles in paragraph (a) to do so, be required to meet its obligations as regards the payment of protected rent debt in full and without delay".
28. It is clear that to direct that the Applicant pay the total protected rent debt of £5333,34 would have some impact on the viability of this business.
29. However, I am not convinced that writing off 100% of the protected rent benefit as proposed by the Applicant is consistent with the requirements of section 15 of the CRCA as it does not share the "financial burden" with the Respondent.
30. I am of the view that writing off 50% of the protected rent debt will provide some relief to the Applicant's viability while being consistent with requirement for the Applicant to meet its obligations under the tenancy. Based on the above, the amount of relief requested is reduced by 50% to £2,666.67.

Payment Period

31. The Applicant seeks relief from immediate repayment and time to pay the balance over 24 months.

Award

32. I grant the following relief to the Applicant

(k) The amount of protected debt relief to be paid to the Respondent is reduced by 50% to £2,666.67.

(l) The protected debt relief of £2,666.67 must be paid in instalments of £222.22 each month from the 9th of December 2022 and be repaid in full by 8th December 2023.

(m) The Applicant shall be relieved from paying interest on any part of the Protected Rent Debt.

(n) The Respondent must pay 50% (half) of the Arbitrators fee, pursuant to section 19 (5) of the CRCA.

Publication of the Award

33. 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 no part of this Award contains 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 16 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.



Michael Bready BL MCI Arb

Seated in Northern Ireland

10th November 2022