

**In the matter of an Arbitration**

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

**Innfrant Limited**

**Claimant**

**v**

**Punch Partnerships (PTL) Limited**

**Respondent**

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**FINAL AWARD**

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**Parties and property**

1. This case concerns rent due under a lease of premises situate at and known as The Abergavenny Arms, Frant Road, Frant, Tunbridge Wells, TH3 9DB ('the Premises').
2. The rent arises under a lease dated 23 July 2015 and made between (1) Punch Partnerships (PTL) Limited and (2) BTJL3 Limited.
3. Innfrant Limited, the Claimant, is the current tenant. The original landlord, Punch Partnerships (PTL) Limited, is the Respondent.
4. The business operated from the Premises is a pub.
5. The Claimant is represented by Protected Rent Debt Limited. The Respondent is represented by DLA Piper UK LLP ('DLA').
6. I refer to the Claimant and the Respondent collectively as 'the Parties'.

## **Referral to arbitration**

7. On 22 August 2022, Guy Woods on behalf of the Claimant gave notice to the Respondent of an intention to refer this matter to arbitration<sup>1</sup>.
8. On 5 September 2022, DLA on behalf of the Respondent wrote to the Claimant to warn them that the Claimant was '*not entitled to refer the issue of Protected Rent Debt to arbitration*'. The reason given by DLA was that in June 2021 the Claimant reached an agreement with Star Pubs & Bars '*in relation to a personal rent concession*'. DLA referred to section 1(3)(b) of the Commercial Rent (Coronavirus) Act 2022 ('the Act') as authority for this assertion.
9. On 22 September 2022, the Claimant referred this matter to arbitration under the Act. The referral to arbitration was for an arbitration on the papers with no oral hearing. In the application form for arbitration, the Claimant confirmed that all the criteria for eligibility for relief under the Act, were met.
10. The referral to arbitration was accompanied by the Claimant's 'formal proposal' for resolving the matter of relief from payment of rent which was provided pursuant to section 11(1) of the Act. The Claimant's formal proposal was dated 21 September 2021.
11. I was duly appointed arbitrator on 5 October 2022 under the Consumer Code for Online Dispute Resolution.

## **Protected rent debt and proposals for relief**

12. In the form of application for arbitration and in the Claimant's formal proposal, the Claimant claimed the amount of the 'protected rent debt' was £51,610.00. The relief requested by the Claimant is for me to write off this sum in its entirety, alternatively for the Claimant to be given 24 months to 'pay any balance'.

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<sup>1</sup> The Claimant originally addressed correspondence and their application under the Commercial Rent (Coronavirus) Act 2022 to Star Pubs & Bars but changed this to Punch Partnerships (PTL) Limited after DLA notified the Claimant that that company is the correct party.

13. In response, the Respondent's primary case is that I must dismiss this reference on the ground that *'the parties have reached agreement over the Protected Rent Debt the subject of this referral'* (see para. 10 of Respondent's formal proposal dated 18 October 2022).
14. The Respondent has requested that I decide this question as a 'preliminary issue'. I am content to proceed in this way, because, if the Respondent is correct, I am required by section 13(2)(a) of the Act to make an award dismissing the reference. In that eventuality, matters concerning, for example, the viability of the Claimant's business that is covered in the Claimant's formal proposal, will not affect the outcome and there is no purpose served by me considering and/or adjudicating upon them.

**Preliminary issue – have the Parties reached an agreement within the meaning of section 13(2)(a)?**

15. The relevant provision in the Act is section 13(2)(a) which is as follows:  
*'13(2) If the arbitrator determines that (a) the parties have by agreement resolved the matter of relief from payment of a protected rent debt before the reference was made, .... the arbitrator must make an award dismissing the reference.'*
16. The support offered to commercial tenants by the Act is limited to 'rent' due for the period from 20 March 2020 until 18 July 2021. This is because this is the period when pubs had to close and/or were adversely affected by coronavirus. The rent attributable to this period is the *'protected rent debt'* (sections 3(1), 3(2) and 5(1)(a)).
17. The 'protected rent debt' of the Claimant is the rent attributable to the entirety of this period because the Claimant was tenant from start to finish of the period.
18. The first question I need to address is this: have the Parties *'resolved the matter of relief from payment'* of the Claimant's protected rent debt? *'Relief from payment'* means writing off the whole or part of the debt, giving the tenant time to pay or reducing any interest payable on the rent (section 6(2)).
19. It might be argued for the Claimant that section 13(2)(a) does not apply to settlement agreements reached before the Act came into force (which is when the Respondent alleges they agreed a settlement with the Claimant). But there is no support for such an argument in the provisions of

the Act and indeed I note that section 13(2)(a) refers to agreements reached '*before the reference was made*' without further time limitation. Specifically, section 13(2)(a) does not refer to agreements before the reference but after the coming into force of the Act. If it had been the intention of Parliament to allow tenants to re-open settlement agreements reached before the coming into force of the Act, the Act would have so provided.

20. For these reasons, I must dismiss this reference if I find that, at any time before 22 September 2022 (the date of the Claimant's reference to arbitration), the Parties reached a legally binding agreement to reduce the rent due from the Claimant for the period from 20 March 2020 until 18 July 2021.
21. As I understand it, this is exactly the Respondent's argument regarding the preliminary issue. The Respondent claims that on 15 June 2021 the Claimant and the Respondent reached a legally binding agreement whereby the Respondent agreed to waive payment of some protected rent debt and give the Claimant additional time to pay arrears of the protected rent debt (and other rent) over a 14-month period. This is how the Respondent alleges the agreement was made:
22. On 14 June 2021, Star Pubs & Bars for and on behalf of the Respondent wrote to the Claimant. The letter was headed '*without prejudice*' ('the June offer'). The Respondent offered the Claimant two things: time to pay the arrears of rent and a rent-free period. The offer was described by the Respondent as a '*personal rent concession*'.
23. According to the Respondent, the arrears as at 14 June 2021 were £83,610.79 and in their formal proposal dated 18 October 2022 they claimed that £79,115.59 of this amount was '*Protected Debt*' (para. 12). The Respondent referred to the arrears as '*the outstanding balance on your account following the COVID-19 restrictions*'. This offer was stated to be made '*on condition that we are in receipt of payment of the sum of £30,000 by 5 pm on 30 June 2021.... this will be followed by 14 monthly instalments of £3,829.34 commencing 1 October 2021*'. The payments, totalling £83,610.79, would therefore clear the entire debt and the Claimant would be allowed an extended period to pay.
24. In addition, in the June offer, the Respondent offered the Claimant a rent-free period from 1 July 2021 until 30 September 2021 which the Respondent claims was worth £21,240.00.

25. Finally, the June offer contained the following terms:

*'2. In the event of you ceasing to be a tenant under the terms of the Lease and/or defaulting in: -*

*2.1 making payment of the Reduced Rent and other property charges under this personal agreement; and/or*

*2.2 complying with the other terms of this personal agreement (including the confidentiality clause below); and/or*

*2.3 complying with the covenants contained in your Lease*

*Then the Reduced Rent agreed will automatically cease to apply and all sums which would have fallen due under the terms of the Lease had the Reduced Rent not been agreed shall immediately become payable by you.'*

26. At the foot of the June offer, there was space for the Claimant to countersign under the following wording:

*'I confirm acceptance of the Personal Rent Concession offered to Innfrant Limited, subject to the conditions detailed in this letter'*

It appears that Guy Woods on behalf of the Claimant signed this confirmation on 15 June 2021. Indeed, I note in this regard that the Claimant does not deny that on 15 June 2021 Mr Woods countersigned the June offer.

27. On 28 June 2021, the Claimant paid the Respondent £30,000 which the Respondent attributes to the initial payment due under the terms of their June offer. And on 8 December 2021 the Claimant paid £1,500 which the Respondent claims was also paid under the terms of that letter. These payments are shown on the Respondent's 'Reconciliation' spreadsheet that was submitted with their formal proposal. I note that the Claimant has not disputed that these payments were made and/or were made pursuant to the June offer.

28. This, according to the Respondent, left a balance due under the June offer of £52,110.79 and the Claimant did not make any further payments pursuant to the June offer.

29. This brings us up to 22 August 2022 when the Claimant gave the Respondent notice that they intended to apply for arbitration under the Act. DLA replied to this notice by letter dated 5 September 2022 to the Claimant. DLA wrote as follows:

*'In June 2021 an agreement was reached between you and our client in relation to a personal rent concession. We understand that not only did you agree to the terms of the concession by*

*countersigning the letter from Star Pubs & Bars dated 14 June 2021 on 15 June 2021 but that, in addition, you have made some payments in accordance with the terms of the agreed concession. Given the above, it is our client's position that you are not entitled to refer the issue of the Protected Rent Debt to arbitration.'*

30. In response, the Claimant emailed DLA on 5 September 2022, claiming:

*'...in January, your client Leona Henderson, told me the plan was cancelled (see email below), we had a meeting of minds, and no agreement is in place'.*

The 'email below' from Ms Henderson stated:

*'As the payment plan has been cancelled on the account in accordance with the agreement and signed letter, your full arrears balance is now payable. Can you please arrange payment of £52,110.79 at your earliest convenience'.*

31. The Claimant claims that as *'the plan was cancelled before [the Act] came into force as evidenced in their email to the [Claimant] in January, therefore the unpaid rent debt is not in any plan and is unresolved'* (see para. 26 of the Claimant's revised formal proposal). It seems this argument is the Claimant's reason why, so they claim, the matter of relief from payment of protected rent debt was not resolved when they referred this matter to arbitration on 5 September 2022.

**Decision – was a legally binding agreement reached in June 2021?**

32. When the Claimant countersigned the June offer on 15 June 2021, a legally binding agreement was made between the Parties ('June agreement'). The terms of the June agreement were the terms laid out in the June offer. It matters not that the June offer was labelled 'without prejudice' because it is trite law that, when a without prejudice offer is unconditionally accepted by the offeree, as it was here, a contract is formed. I am making this finding for completeness only as I note that the Claimant has not disputed that a contract was formed on 15 June 2021.

**Decision – was the June agreement in force when the reference to arbitration was made?**

33. As explained above, if the June agreement was still in force when the reference to arbitration was made, on 5 September 2022, I must dismiss this reference under section 13(2)(a) of the Act.

34. My decision is that the June agreement was in force as of 5 September 2022. I do not agree with the Claimant's characterisation of the statement in the Respondent's email dated 5 September 2022 that the *'payment plan on the account has been cancelled'* (see para. 26 of the Claimant's revised formal proposal). It seems that the Claimant's argument is that this meant the June agreement was cancelled and ceased to have force from the date of the Respondent's email.
35. What the Respondent wrote in the 5 September 2022 email must be considered in its entirety and in the factual context. This is what the Respondent's email said:  
*"As the payment plan has been cancelled on the account in accordance with the agreement and signed letter, your full arrears balance is now payable. Can you please arrange payment of £52,110.79 at your earliest convenience".*
- I cannot agree with the Claimant that this email cancelled the June agreement. It cancelled the payment plan, that is the concession agreed by the Respondent on condition that the Claimant complied with the terms of the June agreement. The Respondent did not write that the contract was cancelled, only that the 'payment plan' was cancelled. The meaning of what the Respondent wrote is confirmed by the demand for payment of £52,110.79 at the end of the email; as mentioned above, this was the balance of sums due under the June agreement which was payable under condition 2 of the June agreement if the Claimant defaulted in making payments of the 'property charges'.
36. I find therefore that the June agreement was not 'cancelled' by the Respondent. In fact, what the Respondent did was, practically speaking and legally, the opposite of that: the Respondent asserted their rights under the June agreement and demanded payment from the Claimant under the terms of the June agreement. The Respondent was holding the Claimant to performance of the June agreement. It is therefore clear that as of 5 September 2022, the June agreement was in force.

#### **Decision on preliminary issue**

37. As mentioned above, the Respondent claims that the June agreement resolved all issues relating to protected rent debt. This is because the June agreement covered rent attributable to the entirety of the relevant period -from 20 March 2020 until 18 July 2021.

38. I note in this regard that the Respondent has not disputed this fact. This being the case, my finding that the June agreement remains in force, means that the parties had resolved all issues relating to the matter of relief from payment of protected rent debt before the reference was made.
39. In the circumstances, as provided by section 13(2)(a) of the Act, I must dismiss this reference.

#### **Other arguments raised by the Parties**

40. I have not discussed and/or decided upon all the arguments advanced by the Parties in their proposals. This is because it is unnecessary for me to do so as the outcome of such arguments would not affect my decision to dismiss the reference under section 13(2)(a).
41. Accordingly, and by way of example only, I have not covered the Claimant's arguments along the lines that the Respondent should share the financial pain of the effects of Coronavirus. This is because where section 13(2)(a) applies, I have no discretion or jurisdiction to award the Claimant any relief; it is mandated by the Act that I must in these circumstances dismiss the application for relief.

#### **Claimant's application for relief**

42. Having decided that the Claimant is not eligible for relief under the Act, and pursuant to section 13(2)(a) of the Act, I dismiss the Claimant's application for me to grant them relief from paying the protected rent debt or any other relief.

#### **Costs of the arbitration**

43. I have made an order dismissing the Claimant's application under section 13 of the Act. Under section 19(5) of the Act, the 'general rule' on costs, regardless of the outcome, is to order a respondent to reimburse a claimant half the arbitration fees paid by the claimant. However, I have power under section 19(6) to award a different proportion (to the claimant) including zero. I would not always refuse an unsuccessful claimant a contribution towards costs where the respondent has written to warn them that they are not eligible for relief under the Act. In this case however I will not allow the Claimant any costs. This is because it should have been obvious



to the Claimant that it was bound by the June agreement and could not re-open the question of relief from payment of rent in an arbitration.

**Publication of Final Award**

44. Pursuant to section 18(2) of the Act, 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 1 pm on 5 December 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.

**Seat of the arbitration**

45. The seat of this arbitration is England and Wales.

MADE AND PUBLISHED by me, Adrian Lifely, of 100 St Paul's Churchyard, London, EC4M 8BU, on 1 December 2022.

A handwritten signature in black ink that reads "A. Lifely". The signature is written in a cursive, flowing style.

Adrian Lifely