

In the matter of an Arbitration

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

Azalea Inns Limited

Applicant

v

Zurich Assurance Limited

Respondent

Agreed Award

Introduction

1. This arbitration relates to rent due from the Claimant as tenant to the Respondent as landlord in respect of a business tenancy of premises situate at and known as Lower Basement and Lower Ground Floor, the Grainger Quarter, Newcastle NE1 5JQ ('the Premises'). The Claimant claims the rent is a 'protected rent debt' within the meaning of the Commercial Rent (Coronavirus) Act 2022 (the Act'), section 3, and claims relief from payment as provided for by section 6(2).
2. Prior to the commencement of this arbitration, the Parties discussed the Claimant's request for relief from payment. They did not however conclude an agreement to compromise the Claimant's claim and on 21 September 2022 the Claimant referred their claim for relief to arbitration (called 'the Referral'). This was preceded by the Claimant on 24 August 2022 giving the Respondent notice of their intention to make a reference to arbitration pursuant to section 10(1) of the Act.
3. The Referral was for an arbitration on the papers with no oral hearing. In the Referral, the Applicant asserted that all criteria for eligibility for resolution of their claim for relief under the Act have been met.
4. I was duly appointed arbitrator on 23 September 2022.

Procedural matters

5. The Claimant is represented by Messrs Elmwoods of 206 Mailing Exchange, Hoult's Yard, Walker Road, Newcastle upon Tyne, NE6 2HL. The Respondent is represented by CMS CMNO LLP ('CMS') of Cannon Place, 74 Cannon Street, London, EC4N 6AF.
6. The arbitration has been conducted according to the procedure laid out in the Act, as supplemented by the Arbitration Act of 1996.
7. On 23 September 2022, I issued a Directions Order giving the Parties a timeline for exchange of formal proposals for resolving the matter of the Claimant's claim for relief from payment of rent, pursuant to section 11 of the Act.
8. On 13 October 2022, I issued Directions Order No. 2 which required the Parties to provide me with certain information and evidence prior to me deciding the application for relief.

Settlement

9. The Parties have not exchanged any formal proposals, but they have informed me through their solicitors that they have agreed terms of settlement of the Claimant's claim for relief.
10. On 22 November 2022, Elmwoods informed me as follows:

'I am pleased to say the additional time you have afforded to us has been put to good use, and the parties have reached an agreement on the terms of payment of the protected rent, the subject of the arbitration referral.'

We would therefore invite you to make an Award by consent in the following terms:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

[REDACTED]

4. [REDACTED]

11. On 22 November 2022, I requested CMS to *'confirm these terms are complete and agreed'*.
CMS responded to me, on the same day, stating *'This is confirmed'*.

12. The Parties have therefore agreed to settle the Claimant's claim for relief and the matters at issue in this arbitration, on the terms set out at paragraph 9 above and the task before me now is to consider the Parties' request for me to issue an Award by consent in the agreed terms.

Matters concerning making an Agreed Award under the Act

13. As the Parties having agreed terms of settlement, I do not consider and/or decide upon the question of whether the Claimant has satisfied the eligibility requirements (for applying for relief) set out in section 10 of the Act.

14. Section 14 of the Act contains some parameters for awards made under the Act. For example, section 14(7) states that the payment date for instalments of payments of arrears must be within 24 months of the date of the Award. However, as made clear by sections 14(1) and 13(5) of the Act, these parameters apply only where the arbitrator is deciding what relief to award, not the situation we have here where the Parties have decided upon what the relief will be as part of an agreed compromise.

15. In fact, the Act itself does not contain provisions setting out how an Agreed Award shall be dealt with.

16. This brings into question whether an Agreed Award is even possible under the Act and by extension whether I have jurisdiction to issue an Agreed Award. That question is fortunately not in doubt as the Arbitration Act of 1996 ('the 1996 Act') applies to this arbitration. This arises because Schedule 1 of the Act states as follows:

'Part 1 of the Arbitration Act 1996 has effect in relation to arbitrations under this Act'.

Furthermore, under section 2(1) of the 1996 Act, the 1996 Act applies because the seat of this arbitration is England and Wales. This is so because the provisions of Part 1 of the 1996 Act apply *'where the seat of the arbitration is in England and Wales or Northern Ireland'* and the seat of this arbitration is England and Wales because it is a 'statutory arbitration' and as provided by section 95(2) of the 1996 Act states *'Every statutory arbitration shall be taken to have its seat in England and Wales or, as the case may be, in Northern Ireland'*. It follows that Part 1 of the 1996 Act is automatically invoked in arbitrations under the Act.

17. The fact that Part 1 of the 1996 Act applies to this arbitration, is significant because section 51 of Part 1 states as follows (with revisions thereto provided for by Schedule 1 of the Act):

'51(1) If during the arbitral proceedings the parties settle the dispute, the following provisions apply.

51(2) The tribunal shall terminate the substantive proceedings and shall record the settlement in the form of an agreed award'

18. It follows that it is my obligation now to issue an Agreed Award to terminate the arbitration and record the terms set out in paragraph 9 above.

19. Furthermore, pursuant to Section 52 of the 1996 Act as modified by Schedule 1 of the Act, I will not give any reasons for my award; the award shall be signed by me and by or on behalf of the Parties; and the award shall state that the seat of the arbitration is England and Wales and the date when the award is made.

Agreed Award

20. Here follows my award made in accordance with sections 51-52 of the 1996 Act as modified by Schedule 1 of the Act:

21. By agreement of the Parties, I grant the following relief to the Claimant:

22. [REDACTED]

23. [REDACTED]

24. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

25. This arbitration is hereby terminated.

26. [REDACTED]
[REDACTED]

Publication of the award

27. Pursuant to section 18(2), I am required to publish this award. I intend to publish the award on the CCODR website. In writing this award, I formed the provisional view that the award does not contain any confidential information relating to the Parties that should be redacted

for the purposes of publication. I therefore provided the award in draft to the Parties' representatives informing them of this view and requesting them to inform me if they consider that any of the contents of the draft award are confidential and should be redacted. The Parties claimed that the agreed terms of settlement are confidential and I have agreed to redact the information about these terms set out at paragraphs 10, 22-24 and 26 from the version of the award to be published on the CCODR website.

Seat of the arbitration

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

MADE AND PUBLISHED by me, Adrian Lifsly, on 1 December 2022 at 100 St Paul's Churchyard, London, EC4M 8BU in the seat of the arbitration England & Wales.

A handwritten signature in cursive script that reads "A. Lifsly". The signature is written in black ink and is positioned to the left of the page.