

Relief from forfeiture not limited to leases



The High Court Judgment in *Hush Brasseries Limited v. RLUKREF Nominees (UK) One Limited & Anor* is being heralded by the hospitality industry as a “landmark” victory against landlords, who (from the tenants’ perspective) have taken commercial advantage of their tenants’ financial suffering during the COVID-19 pandemic.

Hush Brasseries Limited is the tenant of a commercial lease granted in 1999 of its flagship Hush Mayfair restaurant. In 2011, the tenant was granted an option to call on its landlord to grant it a new lease when the existing lease comes to an end in 2024. The related option agreement allowed the landlord to terminate that agreement if the tenant was in breach of either the terms of the agreement or the forfeiture provisions of the existing 1999 lease.

As a result of the COVID-19 pandemic and obligatory closures of restaurant premises throughout 2020 and 2021, the tenant fell into significant arrears of rent. The landlord and tenant subsequently entered into a rent concession agreement in 2021, the terms of which were honoured by the tenant. At the same time however, the landlord exercised their right under the option agreement to serve notice to terminate that agreement, relying on the tenant’s failure to keep up with the rent demanded and due under the lease. The landlord did not however seek to separately forfeit the lease. In doing so, the landlord, by their conduct, “deployed their security but retained the benefit of the claimant’s primary obligations” [under the lease].

The tenant applied for relief from forfeiture. The question for the High Court was whether it had jurisdiction to grant the relief sought. In his judgment, HH Judge Klein rejected the landlord’s argument that the option agreement had not created a proprietary interest in land in favour of the tenant over the leasehold premises. The judge also rejected the landlord’s separate argument that the termination provisions in the option agreement did not represent any security for the performance of the tenant’s obligations under the existing lease. HH Judge Klein held that the jurisdiction to grant relief sought by the tenant was engaged.



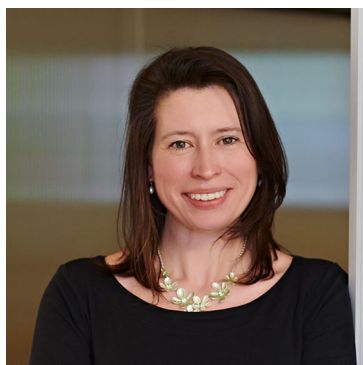
As to whether relief from forfeiture should be granted, HH Judge Klein held that, were it the case that the landlord had sought forfeiture of the lease, the tenant in this case would most likely have been granted relief from forfeiture. There was no reason to treat the forfeiture of the option agreement any differently. The tenant's failure to pay rents due under the lease was not wilful. It was the consequence of the COVID-19 pandemic which similarly crippled so many in the food and hospitality industry.

The case of *Hush Brasseries* serves as a useful reminder of the extent of the court's jurisdiction to grant relief from forfeiture and also clarifies that relief from forfeiture is not simply limited to leases. This judgment will be of interest to those tenants whose option (and possibly other) agreements have been forfeited by landlords as a result of their financial struggles during the pandemic.

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