

IN THE MATTER OF AN ARBITRATION BETWEEN

CLAIMANT

AND

RESPONDENT

AND THE COMMERCIAL RENT (CORONAVIRUS) ACT 2022

AND THE ARBITRATION ACT 1996.

Claimant (Applicants)

And

Respondent (Respondent)

FINAL AWARD

1. This Award is my First and Final Award and is issued with reasons following an application under the Commercial Rent (Coronavirus) Act 2022 (the Act) to apply for relief from payment of protected rent debts under a business arbitration.
2. This Award is issued on the matter of relief from payment is given in a way that is consistent with the section 15 principles aimed at preserving or restoring and preserving the viability of the business of the tenant so far as it is consistent with preserving the landlord's solvency.
3. The landlord is required where appropriate to submit evidence for the arbitrator to consider on its solvency which would be judged on the criteria set out in 15 3 to consider whether the landlord is likely to become unable to pay its debts as they fall due.
4. Claimant (the Applicant) of xxxxxx is the tenant of the premises at xxxxxx (the premises) under a lease dated xxxxxx 2016. The tenant is an applicant in person. The ultimate parent company is Claimant's Group plc.

5. The landlord under the xxxxxx 2016 lease is the Respondent of xxxxxx (the Respondents). The landlord is represented in this arbitration by its agents xxxxxx.
6. Rent is defined as an amount payable for possession and use of premises plus a service charge plus interest on the unpaid amount. Protected rent occurs during a period in which the tenancy was adversely affected by coronavirus and was subject to a closure requirement beginning on 21st of March 2020 and ending on 18 July 2021. The relief available under the Act might be writing off the whole or any part of the debt, giving time to pay the whole or any part of the debt by instalment and reducing to no interest otherwise payable under the terms of the tenancy in relation to the whole or part of the protected rent debt. Under part 3 of the Act section 23 gives a temporary moratorium on the enforcement of protected rent debts and the conclusion of an arbitration.
7. The Claimant and the Respondent have not agreed that total arrears of £xxxx including VAT relate to the COVID protected rent period as set out in a series of letters between Claimant of Claimant and Respondent. The total sum is made up of rent £xxxx plus service charge of £xxxx and insurance of £xxxx asset as set out in the letter dated 7 September 2022.
8. In that same letter Claimant proposed to settle this debt by requesting a waiver of 347 days rent and that the remaining rent, service charge and insurance costs would be paid over 24 equal monthly instalments, commencing one month after acceptance of the offer, on the basis that no further sums will be due, no interest will be charged and each party bears their own costs.
9. No reply appears to have been received within 14 days of that letter and so the Claimants referred the dispute to the Dispute Appointment Service of the Chartered Institute of Arbitrators on 7 September 2022. Claimant served the Section 10(1) (a) notice on 2 August 2022.
10. By email dated 13 October 2023 Respondent's agent wrote on behalf of Respondent as the Landlord and Respondent referring to an earlier letter dated 15 August 2022 disputing the referral of the Protected Rent Debt to an Arbitrator under the Commercial Rent (Coronavirus) Act 2022 because the reference to the Arbitrator did not include a formal proposal or a statement of truth.
11. The Respondent requested that the reference should be dismissed under section 13(3) of the Act on the basis that the Claimant's business is not viable and would not be viable even if relief from payment of any kind was given or that an award made that the full amount should be paid. The Respondent referred to a further letter dated 21 September 2022 with a statement of truth referring to a document dated 6 September 2022 that the Respondent states does not exist.
12. It is clear that the Respondent does not accept that the Claimant is entitled to any relief against rent for the "COVID" period 21 March 2020 to 18 July 2021, the Protected Rent Debt. The Respondent's reasons at 13 October 2022 was that the cinema had not reopened for business at that date and that the ultimate US parent company, filed for

bankruptcy in the US and in addition the Claimant's summary of accounts provided by the Claimants on 7 September 2023 for the four years 2017 to 2021 showed a negative EBITDA.

13. It is accepted in the Proposal from the Claimant that all other non COVID arrears would be paid in instalments over 24 months, in a sum yet to be agreed but the other non-COVID arrears are not protected rent debt as defined in Sections 2 and 3 of the Commercial Rent (Coronavirus) Act 2022.
14. The Respondent wrote on 20 October 2023 and confirmed that he would send through information on the period of protected rent and amount outstanding once he had heard from the managing agents. The Respondent wrote again on 6 December 2023 and send calculations that showed £xxxx as protected period rent and £xxxx as protected period service charge. The Respondent contrasted these figures with those of the Claimant as tenant at £xxxx and £xxxx respectively.
15. It is agreed that there are no insurance charges outstanding and the above figures do not include interest on any debt calculated on a daily basis from the due date under the lease at a rate of 4% over base rate.
16. I note the Claimant's ultimate parent was under a US Chapter 11 arrangement and is represented by bankruptcy lawyers but I am not aware if Chapter 11 court approval has been obtained.
17. A summary of the Claimant's statutory accounts was attached to the letter dated 7 September 2022 in the proposed offer and the application for relief.
18. I, Kay Catherine Sheila Hilary Linnell was appointed as Arbitrator in this dispute by the Chartered Institute of Arbitrators as arbitrator in this reference under case number DAS-01372-V7V6T on 19 September 2023. My Award should be issued within 90 days on or before 18 December 2023.
19. I issued my standard terms and conditions and engagement letters on 19 September 2023 and these were not returned to me by ether party.
20. I wrote to both parties on 18 October 2023 to request the return of the signed engagement letters and requesting submissions before Friday 20 October 2023 but I did not issue an Order for Directions as Claimant replied and agreed to send information. Claimant in his email dated 7 November 2023 sent me the accounts of the Claimant for the years ended 31 December 2020, 2021 and a profit and loss account for 2022 and a forecast for 2023.
21. In the same email dated 7 November 2023 the Claimant confirmed that:-

"Claimant is one of a number of wholly owned subsidiary entities in the UK and that accounts are held with Barclays under the name of [the UK parent] and that all subsidiaries around the world include [the UK parent] act as guarantors of group loans"

22. This limited disclosure exercise of financial data has enabled me to review the submissions exchanged to date. This did not exclude either party sending any other document to me but no other documents have been received. All documents sent to me were copied to the other party and are held confidentially and not disclosed to any other person.
23. The claimant, Claimant has provided adequate financial accounts and details of all relevant financial arrangements with any associated companies (including joint banking and financial guarantees) to enable me to review the trading and financial position of the Applicant as tenant of the property.
24. On 7 November 2023 a Director of the Applicant provided the financial statements for the Claimant for the years ended 31 December 2020, 31 December 2021 and 31 December 2022 and the 2023 forecast. It was confirmed that the Claimant is one of a number of wholly owned subsidiaries in the UK with accounts held under the name of the Claimant's UK parent company and that all subsidiaries around the world including the Claimant act as guarantors of the group loans. There is public information that indicates shareholders in the Claimant group will lose the value of their investment under recent proposals to reorganise the worldwide business and exit the Chapter 11 bankruptcy. The London-listed chain issued a statement on 11 April 2023 that it had filed a reorganisation plan with an American bankruptcy court. The long-term future of the group remains uncertain as the group struggled to sell its business following six months in bankruptcy. In September 2022, it was publically announced that the group had filed for bankruptcy in the US for its own protection after accumulating billions of dollars in debt during the pandemic.
25. The Claimant's UK parent company pay labour, staff, overheads, services and suppliers centrally and recharge these costs to the Claimant. This group of companies was founded in 1995 and is now stated to be one of the leading cinema groups in Europe. Originally a private company, it re-registered as a public company in xxxxxx 2006 and was first listed on the London Stock Exchange in xxxxxx 2007.
26. The matter of going concern was dealt with in the 31 December 2020 accounts on page14 and Claimant considered itself to be viable based on full reliance on its parent entity and written confirmation from the xxxxxx Group plc. The Claimant's accounts for the year ended 31 December 2020 were signed on 21 September 2021 and filed at Companies House on 24 September 2021.
27. The accounts for the year ended 31 December 2021, signed off on 9 October 2023, refer in the strategic report refers to deleveraging exercise being conducted by the Claimant's group parent through its Chapter 11 arrangement to significantly reduce the Group's debt. However, Price Waterhouse Coopers LLP have qualified the Audit Report and note the Directors are reliant on financial and other support from the new UK parent company, as an intermediary company within the group, to meet its obligations over the next 12 months. There is a reference to the volatility of theatrical releases in the US film industry giving a material uncertainty but as set out in note 1 the auditors did not disagree with the Directors use of the going concern basis.

28. In note 1 on page 16 of the 2021 accounts the Directors reported that the Claimant's parent company had changed and the new parent company, had completed its restructuring plan and emerged from the Chapter 11 US procedure on xxxxxx 2023, whilst the former parent company xxxxxx Group plc had gone into administration under the Insolvency Act 1986. There is a commentary on strong consumer demand for films' post the 2021 reopening and an acknowledgement of increased competition from film streaming services and film release delays and lower admissions from the 2019 levels.
29. No financial information was provided to me by the Respondent.
30. I have reviewed the accounts and financial summaries provided by Claimant as tenants and note that Claimant accounts show an insolvent position as at 31 December 2022 of £xxxx after including lease liabilities of £xxxx. I have considered the financial viability of the Applicant based on the latest available Balance Sheet as at 31 December 2022 and note the continuing support of the parent company which is essential for the continued trading of the subsidiary Claimant.
31. The pattern of sales fell from £xxxx in 2019 to £xxxx in 2020 but recovered to £xxxx in 2021 and £xxxx in 2022 and £xxxx in 2023 demonstrating the impact of forced closure caused by the COVID 19 pandemic
32. The Respondent in the letter from Respondent dated 13 October 2022 addressed to Claimant of Claimant draws attention to Section 13(3) of the Commercial Rent (Coronavirus) Act 2022 pointing out the duty of an Arbitrator to dismiss any reference where the tenant's business is not viable or would not be viable even if the tenant were to be granted relief from payment of any kind.
33. It is clear to me as Arbitrator that although Claimant is not trading profitably and its Balance Sheet shows a negative net worth of £165,362K at 31 December 2022 and was technically insolvent, it has a close relationship with its worldwide parent and intercompany recharges and central costs might mask the true position. Claimant has survived solely through the support of its parent group but in contrast its true trading results might be masked by inter Group cross charges.
34. I am aware of my obligation under Section 13(3) of the Commercial Rent (Coronavirus) Act 2022 and bearing in mind the continuing trading and improving results of Claimant I consider that the tenant has satisfied me that its business is viable even if on paper it appears to have financial difficulties.
35. The tenant Claimant in the application for the relief from commercial rent has agreed to pay the service charges in full. I therefore award no relief for the service charges in the sum of £xxxx which are payable in full on demand after the issue of this award.
36. With regard to the 347 day relief sought by the tenant Claimant I accept the arrears in the protected period as £xxxx as calculated by the landlord Respondent. The tenant Claimant has requested a full waiver of the rent in return for payment in full of the

service charges on the basis that no further sums will be due and no interest charged on late payment and the parties pay their own legal and professional fees arising.

37. To repeat the options available to me set out in 6 above as Arbitrator are to write off the whole or any part of the protected rent debt and also to give consideration for time to make payment of any remaining arrears and the interest provisions of the lease.

I, Kay Catherine Sheila Hilary Linnell as Chartered Arbitrator do hereby consider, make and publish my Final Award.

The Award

- 1) I award and direct that the application by the Respondent that reference should be dismissed under section 13(3) of the Act on the basis that the Claimant's business is not viable and would not be viable even if relief from payment of any kind was given or that an award made that the full amount should be paid is denied and dismissed;
- 2) The Claimant's Application for relief of 100% of the rent due of £xxxx (including VAT) for the COVID protected period being 21 March 2020 to 18 July 2021 leaving £xxxx of service charge payable in 24 equal monthly instalments without interest or professional fees is denied;
- 3) The Claimant is granted the sum of £300,000 in relief under the Commercial Rent (Coronavirus) Act 2022 leaving the sum of £xxxx and the service charges in full of £xxxx totalling £xxxx payable in 11 equal instalments of £xxxx after a first payment of £xxxx due on 25 January 2024 and monthly thereafter.
- 4) No interest at 4% over Base Rate as specified in the lease will be due and payable by the Claimant unless one of the specified instalments is paid late and then it will be calculated at 4% over Base Rate from the date that instalment was due until the date it was paid.
- 5) Each party bears its own costs in the Arbitration and the Respondent shall deduct the sum of £xxxx being £xxxx plus VAT from the first payment of the arrears of rent to compensate the Applicant for 50% of the Arbitration costs of £xxxx.

Published by me this 21st. day of December 2023 in Basingstoke, England.

Miss Kay Linnell

Chartered Arbitrator

Date_____

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FIRST AND FINAL AWARD

MISS KAY LINNELL (Arbitrator)

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