

In the matter of an Arbitration under The Commercial Rent (Coronavirus) Act 202

Between:

Judith Evans

Applican

v

Punch Partnerships (PML) Ltd

Responden

FINAL AWARD

Parties and the Premises

1. The Applicant in this matter, Judith Evans, is the tenant of the property at Crown Inn, Romsey Road, Kings Somborne, Stockbridge SO20 6PW. The Applicant is represented by Chris Wright of Protected Rent Debt. The Applicant seeks relief from the payment of £11,000.00 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 Punch Partnerships (PML) Limited. The Respondent is represented by Ben Mackenzie assisted by Clare Jones, of Weightmans LLP.

Procedural Background

3. On the 23rd 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 £11,000.00 comprising rent arrears;
- (b) Confirmed that the Applicant had served notice of intention to make this reference to arbitration on the Respondent on 26th August 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. The Applicant made a formal proposal dated the 21st September 2022. This proposal sought that:

- a. the amount of Protected Rent Debt is assessed by the Applicant as £11,000.00;
- b. The amount of relief requested is £11,000.00;
- c. If applicable, be given relief from immediate repayment and time to pay any balance over 24 months

6. On 7th October 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 12th October 2022 copied to the Parties.

Directions

7. On 12th October 2022, I emailed both Parties with directions as follows:

(a) To the Applicant, requesting confirmation by 4pm on 17th October 2022;

i. when the Referral was served on the Respondent

ii. that the Referral included the Documents set out above

iii. that the Referral and the Documents include everything relied on to amount 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 17th 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).

8. The Applicant responded to the Directions on 17th October 2022 confirming that notification of the intention to make a referral to arbitration was sent to the Respondent on 7th October 2022.
9. On the 19th October 2022, the Respondent responded to the Directions by filing a Submission on behalf of the Respondent, rejecting the Applicant's proposal dated the 21st September 2022, further detailing an agreement already in place between the parties in the matter of relief from payment of a protected rent debt. The said Submission referred to various enclosures that were attached.
10. The Respondent submitted that as the parties had already entered into an agreement repayment plan agreed to be started from April 2022 going forward with a monthly payment of £1,000 to be made in addition to rental payments. The Respondent submits that the Applicant was written to on the 24th February and asked that they detailed anything they disagreed with within 7 days- no response was received. The Respondent then wrote to the Applicant on the 15th March 2022 confirming details of the agreement regarding the payment plan, that the agreement would be reviewed in October 2022 and providing the Applicant with a contact number should they wish to discuss the matter further- no contact was made. Thereafter, the Applicant made five payments of £1,000 pursuant to the agreement between the parties. The Respondent submits that the Applicant did not make any further contact with the Respondent to discuss this agreement until an email on the 26th August 2022 confirming a reference was being made to Arbitration. The Respondent submits that as this agreement was in place, the Applicant is unable to refer the matter to Arbitration.

11. The Applicant filed a revised Formal Proposal, dated the 2nd November 2022, rejecting the Respondent's submission. The Applicant's revised proposal made no request to amend the relief they sought, but submitted that the Respondent was operating contrary to the UK Government's "Code of Practice for Commercial Property Relationships following the COVID-19 pandemic". Specifically, the Applicant principally submitted they do not accept that they entered a legally binding agreement with the Respondent. Rather the Applicant feels that they had been placed under duress and bullied into making the repayments. Rather, the Applicant submits that negotiations and the situation generally was fluid and subject to change. The Applicant submits that at no time were it made clear that the agreement was legally binding and would take away rights to relief through Arbitration.
12. The Respondent emailed a response to the Applicants revised proposal on the 9th November 2022. The Respondent asserted that the conduct of the Applicant was such that the Applicant had agreed to the Respondent's offer of a repayment plan and as such agreement had been reached.
13. In an email on the 10th November 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).
14. My award is made on consideration of the following documents provided by the Parties.
 - Applicant's formal proposal and Applicant statement signed by Chris Wright dated 21st 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
 - Documents identified within the Directions issued on the 12th October 2022.
 - The Respondent's submission, with accompanying documentation, dated 19th October 2022. The Respondent's submission has been verified by a statement of truth as required under section 12(2) of the CRCA;

- The Applicant's Revised Proposal, with accompanying documentation, dated 2nd November 2022. The Applicant's Revised Proposal has been verified by a statement of truth as required under section 12(2) of the CRCA; and
- The Respondent's Response to the Applicant's Revised Proposal, dated the 9th November 2022. The Respondent's Response to the Applicant's Revised Proposal has been verified by a statement of truth as required under section 12(2) of the CRCA

Eligibility for grant of relief

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

16. 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

17. There is no dispute that this is business tenancy.

Protected Rent Debt

18. The proposals submitted by the Applicant suits that the protected rent debt figure is £11,000. The Respondent submits that the balance of debt is £11,084.15. For the purposes of this award, I will treat the protected rent debt to the lesser of the 2 figures, namely £11,000.

Parties must have not reached agreement

19. Section 13(2) of the Commercial Rent (Coronavirus) Act 2022 provides that if the arbitrator determines that if 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.

20. The Applicant principally relies on the submission that they did not realise they were entering into a legally binding, or formal, agreement and that there was no negotiation but bullying tactics were used to achieve any payments made. The Respondent sets out the legal principles on offer and acceptance supporting their submission that agreement had already been reached.

21. I have considered all written submissions in this case and I consider that it would be perverse to say that no agreement had been reached by the parties. The Applicant had made five payments following this agreement and I do not consider there were any bullying tactics, as alleged, to achieve this agreement. The fact that the Applicant did not consider this agreement to be binding is a confusing submission. It is hard to understand what else this could have been and their payments that followed must be considered to be part-performance, at the very least. The opportunity to review this agreement in October 2022 does not mean that there was no agreement reached, rather it shows that an agreement had been reached that would be subject to a review if necessary.

Award

22. Given I find that the parties had agreement that resolved the matter of relief from payment of a protected rent debt before the reference was made, I must make an award dismissing the reference.

23. Accordingly, this reference is dismissed.

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 24th 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

20th November 2022