

## Insights

# WHAT A RELIEF! HIGH COURT GRANTS RELIEF FROM FORFEITURE OF AN OPTION TO TAKE A NEW LEASE

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## SUMMARY

This decision has confirmed that a court can grant relief from forfeiture in relation to a tenant's option to take a new lease. It is a useful reminder for landlords that forfeiture does not apply solely to leases, and is a helpful example of the factors a court takes into account when considering whether or not to exercise its discretion to grant relief from forfeiture.

## Facts

The tenant of Mayfair restaurant Hush had an option to call for its landlord to grant it a new lease. The option was registered at the Land Registry and could be terminated by the landlord in the event of non-payment of rent by the tenant.

During the Covid-19 pandemic in 2020 and 2021, the tenant fell into arrears and the landlord served notice to terminate the option because of the rent arrears. It did not seek to forfeit the lease.

Following a period of negotiation, the landlord agreed to waive some of the arrears and the tenant paid the rest in instalments pursuant to a concession agreement.

The tenant sought relief from forfeiture of the option because all the rent arrears were paid.

## Questions for the court

For the court to have jurisdiction to grant relief from forfeiture, the tenant had to satisfy these pre-conditions:

1. By the option, did the tenant obtain a sufficient proprietary land interest?
2. Did the termination clause in the option secure performance of the tenant covenant to pay rent in the lease?

Even if the tenant satisfied those pre-conditions, the court still had a discretion whether or not to grant relief from forfeiture.

## **Decision**

The court held that:

1. The tenant only needed to establish that it had a proprietary land interest, and it had done so.
2. The termination clause in the option was intended to secure the performance of the tenant covenant to pay rent in the lease.

So the court had jurisdiction and it exercised its jurisdiction to grant relief from forfeiture in the tenant's favour as follows:

- Had the landlord forfeited the lease (rather than the Option) because of the rent arrears, it is likely that the tenant would have been granted relief. It would be odd if there was a difference in approach just because the underlying document was an option agreement rather than a lease.
- By not forfeiting the lease at the same time as the option, the landlord created a situation in which they would still have a source of rent for the remainder of the lease term.
- The tenant's default was not wilful, and the arrears were caused by the Covid-19 pandemic and resulting restrictions on trade. It was not otherwise in breach of lease.

Therefore, the court held that it would be unconscionable for the landlord to retain the benefit of the termination of the option.

## **Key takeaways**

In the current economic climate, landlords are likely to see tenants across a wide range of sectors coming under increasing pressure, and forfeiture and relief from forfeiture are likely to be hot topics in 2023. This decision is a timely reminder of the principles the court will consider when exercising its discretion to grant relief from forfeiture – not just of leases but any agreement that establishes a relevant land interest.

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