

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION ACT 1996
AND IN THE MATTER OF THE COMMERCIAL RENT (CORONAVIRUS) ACT 2022 AND
IN THE MATTER OF AN ARBITRATION CONDUCTED UNDER THE CHARTERED INSTITUTE
OF ARBITRATORS COMMERCIAL RENT DEBT ARBITRATION SCHEME**

BETWEEN:

██████████

Applicant

v

████████████████████

Respondent

FINAL AGREED AWARD

Introduction

1. This is the Final Award (“Final Award”) in an arbitration (“the Arbitration”) pursuant to the Commercial Rent (Coronavirus) Act 2022 (“CRCA” and/or “the Act”).
2. The arbitration relates to rent due from the Applicant to the Respondent under a lease between ██████████ and ██████████ at ██████████
████████████████████ (“the Premises”). The Applicant is the tenant under the Lease and the Respondent is the Landlord.
3. The Applicant carries on a business at the premises operating a cinema.
4. Arrears of rent, (“the Arrears”) have arisen.
5. On 2 August 2022, the Applicant notified the Respondent of its intention to refer the dispute to Arbitration.

6. The Applicant has made an application under The Commercial Rent (Coronavirus) Act 2022 (“the Act”) for relief and referred on 2 September 2022 the dispute between it and the Respondent to arbitration (“the Reference”) by the Commercial Rent Debt Arbitration Scheme of the Chartered Institute of Arbitrators (“CI Arb). An approved arbitration body for the purposes of section 7 of CRCA.

7. The Referral by the Applicant sought relief from payment of rent during the protected period.

8. I have carefully considered the Commercial Rent (Coronavirus) Act 2022 and the arbitration scheme that it provides. I have also considered the “*Guidance to arbitrators and approved arbitration bodies on the exercise of their functions in the Act*” (“the Guidance”) dated April 2022. I have considered the Arbitration Act 1996 (AA:1996), which applies to this Arbitration and borne in mind that, as set out in paragraph 1.3 of the Guidance, where there is any inconsistency between CRCA and AA96, CRCA applies.

The Parties

9. The Applicant is [REDACTED] whose address is [REDACTED]
[REDACTED] The Applicant is not represented.

10. The Respondent is [REDACTED] a company registered in England & Wales whose office is [REDACTED] and [REDACTED]
[REDACTED]

11. The Respondent is represented by [REDACTED] of [REDACTED]
whose address is [REDACTED]

Jurisdiction and Seat of Arbitration

12. The parties were unable to resolve their disputes in relation to the Arrears, and the Applicant commenced the arbitration pursuant to the Act. The Act itself provides the jurisdiction, and the seat of the arbitration is England & Wales.

13. I was appointed as the arbitrator on 14 February 2023 by the CIArb Dispute Appointment Service following a referral to arbitration (“the Referral”) by the Applicant on 6 September 2022, pursuant to The Commercial Rent (Coronavirus) Act 2022 (“the Act”).

14. The referral is for a Documents Only arbitration.

Procedural Matters

15. The Arbitration has been conducted according to the procedure laid out in the Act as supplemented by the Arbitration Act of 1996.

Settlement

16. On 4 July 2023, Mr [REDACTED] for the Applicant, emailed me to advise that the parties have entered into a binding agreement and provided me with the key terms.

17. Mr [REDACTED] then advised that the key terms were:

- i. The Protected Rent it is £702,883.40, including VAT;
- ii. There is also £6,934.69, including VAT of unprotected rent debt on the account;
- iii. The total arrears debt is therefore £709,818.09;
- iv. The Protected Rent debt comprises rent, service, charges, and insurance;
- v. The Landlord has agreed to waive £336,431.31, including VAT;
- vi. The tenant will pay the balance of £343,386.78 by way of 29 monthly instalments of £7,948.77 plus VAT followed by 9 monthly instalments of £7,948.76 plus VAT.

18. Mr [REDACTED] then stated:

‘A consent award would be greatly appreciated’.

19. On 14 July 2023, I requested the Respondent to confirm agreement with the Applicant’s email of 4 July 2024.

20. On 14 July 2023, I requested both parties to provide information on any agreed timescale for the first payment.

21. On 14 July 2023 Mr [REDACTED] for the Applicant, responded to my email of the 14th. to state that the first payment will be paid on the first of the month following [REDACTED] [REDACTED] emergence from its Chapter 11 restructure (currently scheduled to occur on 31 July 2023).
22. On 4 August 2023, I requested Mr [REDACTED] for the Respondent to respond to my email of 14 July 2023.
23. On 7 September 2023, I requested Mr [REDACTED] for the Respondent to respond to my email of 14 July 2023 so that I could complete the Consent Award.
24. On 28 September 2023, I issued Directions 08 and requested confirmation from the Respondent to reply to my emails of the 4th. and 14th. July and confirm their agreement so that I could issue the Consent award.
25. On 26 April 2024, I was issued with the Deed of Variation signed by the Respondent only.
25. On 20 October 2023, I emailed both parties and stated that I would proceed with the Consent award based on the information provided by the Applicant and would issue an initial draft award to the parties.
26. On 30 July 2024, Mr [REDACTED] for the Respondent, emailed me to confirm that he only had a copy of the Deed of Variation signed by the Respondent only but confirmed that the terms were as agreed as per Mr. [REDACTED] email note of 4 July 2023.
27. On 7 August, I emailed Mr [REDACTED] for the Respondent to advise that:

‘However, there is a discrepancy in the email of 4 July 2023 (not 4 July 2024) in that, by my calculation, when you calculate the monthly payments including VAT, the total actually comes to more than £343,386.78 including VAT.

By my calculations, the monthly payments including VAT come to £362,463.80.

The letter of 4 July 2024 stated:

The Tenant will pay the balance of £343,386.78 by way of 29 monthly instalments of £7,948.77 + vat followed by 9 monthly instalments of £7,948.76 + vat.

My calculations:

7,948.77 x 29 = 230,514.33

7,948.76 x 9 = 71,538.84

Total = 302,053.17 plus VAT

302,053.17 x 20% = 60,410.63

302,053.17 + 60,410.63 = £362,463.80

£362,463.80

I can include the balance due of £343,386.78 as the agreed balance to be paid.

The Deed of variation includes for the correct amount of £343,386.78 including VAT when you use the stated monthly payments.

However, please can you both confirm the monthly payments so that I can issue the Final Agreed Award or please provide a copy of the Deed of Variation signed by both parties.

Please may I have your comments?..'

28. No comments have been received from either party.

FINAL AGREED AWARD

29. Here follows my Award, which I made in accordance with sections 51-52 of the 1996 Act, as modified by schedule one of the Act.

30. By agreement of the parties, I grant the following relief to the Applicant.

- i. The Protected Rent is £702,883.40 including VAT plus £6,934.69 including VAT of unprotected rent debt on the account, which equals £709,818.09;
- ii. The total arrears debt is therefore £709,818.09;
- iii. The Protected Rent debt comprises rent, service, charges, and insurance;
- iv. The Respondent has agreed to waive £336,431.31, including VAT;
- v. The Applicant will pay the balance of £343,386.78 by way of 29 monthly instalments of £7,948.77 plus VAT followed by 9 monthly instalments of £7,948.76 plus VAT.
- vi. The first payment is to be made on the first of the month following the Applicant's emergence from its Chapter 11 restructure that was scheduled to occur on 31 July 2023.

31. This arbitration is now hereby terminated.

Publication of the Award

32. Pursuant to section 18(2) of the Act, I am required to publish this award. I intend to publish the award on the Ciarb website. In writing this award, I have formed the provisional view that the award does not contain any confidential information relating to the Parties which ought to be redacted from the Award pursuant to section 18(4) for the purposes of publication. I will, therefore, publish the award in full on the Ciarb website unless either party indicates to me by 4 pm on the 3 September 2024 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 submission.

MADE AND PUBLISHED by me, Bernadette Barker, at 20 Kendal Place, Putney, London, SW15 2QZ, the seat of the arbitration on 1 September 2024

Bernadette Barker

Bernadette Barker

1 September 2024