



Tenant Excused From Paying Rent During COVID-19 Restaurant Shutdown

This month, the Business Litigation Session of the Massachusetts Superior Court issued a decision excusing a tenant from paying rent during the COVID-19 business shutdowns last spring. The court applied the “frustration of purpose” doctrine and held that the tenant’s ability to operate a café was a basic assumption underlying the lease.

In June of 2017, Plaintiff UMNV 205-207 Newbury, LLC (“UMNV”), as landlord, and Defendant Caffé Nero Americas Inc. (“Caffé Nero”), as tenant, entered into a fifteen-year lease of space on Newbury Street. The lease provided that Caffé Nero could only use the leased premises for the operation of a café. In March of 2020, Governor Baker, in response to the COVID-19 pandemic, barred restaurants, including Caffé Nero, from permitting on-premises consumption of food or beverages. Caffé Nero wrote to UMNV asking it to waive all rent while the business was required to be closed. UMNV refused to do so and instead informed Caffé Nero that it was in default for nonpayment of rent. UMNV then brought a summary process eviction action and an action to recover unpaid rent and other costs.

The court denied UMNV’s motion for summary judgment in the action to recover rent and instead granted partial summary judgment in Caffé Nero’s favor. The court held that the legal doctrine of frustration of purpose discharged Caffé Nero’s obligation to pay rent between March 24 and June 22, 2020 because the entire purpose of the lease was frustrated while Governor Baker’s orders barred indoor food and drink service. The court stated that it could not be disputed that Caffé Nero’s continued ability to operate a café was a basic assumption underlying the lease, and there was no evidence that the parties contemplated the risk of a shutdown due to a global pandemic. Therefore, UMNV’s notice asserting breach of the lease was invalid.

The court also disagreed with UMNV’s contention that a force majeure clause in the lease barred Caffé Nero’s argument. The court explained that the force majeure clause addressed the risk that performance may become impossible but did not address the distinct risk that the main purpose of the lease may be frustrated without rendering performance technically impossible. Similarly, the court found that a provision of the lease stating that Caffé Nero’s obligations were “separate and independent covenants” did not obligate Caffé Nero to pay rent. The court stated that the independent covenants provision addressed Caffé Nero’s obligation to pay rent in the event UMNV breached its obligations, not the doctrine of frustration of purpose.

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