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Waiving The Right to Forfeit?

Re: Hush Brasseries Ltd v RLUKREF Nominees (UK) One Ltd and another [2022] EWHC 3018

The right of forfeiture is the landlord's right to re-enter into the premises following a breach by the tenant and consequently, terminating the lease. In the face of the tenant's default the landlord has two options, namely:-

- 1) to seek forfeiture of the lease, or
- 2) to treat the lease as continuing.

At this juncture, the actions undertaken by the landlord can significantly impact the subsequent ability to bring the leasehold agreement to an end by way of seeking forfeiture.

In this matter Hush Brasseries Limited ("HBL") operated a restaurant and hospitality business from a commercial premises. The leasehold agreement was due to expire in 2024: however, subject to providing the landlord with notice, HBL had the option to request an extension of the lease until at least 2030. The said right could be determined on a series of events, including the failure of HBL to make the rent payment for at least 21 days.

During the COVID-19 pandemic HBL fell into rent arrears beyond the 21-day time period required to seek forfeiture and during July 2021 the landlord served notice to terminate the lease extension option in favour of HBL: however, not to forfeit the lease. The parties entered into a settlement agreement in which the rent arrears would be paid and HBL commenced proceedings to seek relief from termination of the lease extension option (due to the aforementioned settlement agreement).

The High Court decided in favour of HBL and granted relief due to the fact that the option to extend the lease provided an equitable interest in the property and it would be unconscionable for the landlord to terminate the option, especially when considering that it had not sought forfeiture in the first instance. Furthermore, it did not consider HBL's failure to make the rent payment to be wilful due to it being caused by the COVID-19 pandemic.

The case reinforces the fact that a landlord must act carefully when a tenant defaults on rent payment or breaches any other term of the leasehold agreement. The protection afforded to tenants under The Landlord and Tenant Act 1954 and by way of common law is vast and it is important that a landlord takes the right steps to protect their position.

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