

COVID-19 Disruption May Be Grounds for Termination of a Lease Agreement

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As a result of COVID-19, many commercial tenants faced financial hardship as a result of which they were unable to pay the rent under their lease agreements.

In a recent Rental Dispute Settlement Centre (RDSC) decision (Rental Disputes Centre 6th Appeals Committee Appeal No. 21774-2021 (Main), 21793-2021 (Joined)), the RDSC issued a decision concerning the circumstances in which a lease agreement may be terminated due to the substantial financial losses caused by the COVID-19 pandemic ("Judgment").

Background

In this case, the tenant leased premises from the landlord for a term of nine (9) years to operate as a school. The tenant filed a case with the RDSC to terminate the lease agreement due to financial losses suffered as a result of the COVID-19 pandemic. The tenant submitted an experts' report to the RDSC to prove that they had incurred significant financial losses during the pandemic and could not generate any profits or returns of investment from their business as a school as a result of which it was unable to pay the rent. The tenant requested the RDSC to terminate the lease agreement on the grounds that the COVID-19 pandemic is an exceptional event of a public nature that was unexpected and caused hardship to the tenant.

The RDSC appointed a three member expert committee to look into the tenant's financial situation, assess the scope of the financial hardship that the tenant faced, and to examine whether or not it was possible for the tenant to fulfil his obligations relating to the payment of rent under the lease.

Based on the findings of the experts, the RDSC was persuaded that it was impossible for the tenant to perform its obligations of paying the rent. The RDSC determined that the tenant was entitled to terminate the lease based on Articles 249 and 794 of the Civil Transactions Law No. 5 of 1985 (the UAE Civil code).

Article 249 provides:

"If exceptional circumstances of a public nature which could not have been foreseen occur as a result of which the performance of the contractual obligation, even if not impossible, becomes oppressive for the obligor so as to threaten him with grave loss, it shall be permissible for the judge, in accordance with the circumstances and after weighing up the interests of each party, to reduce the oppressive obligation to a reasonable level if justice so requires, and any agreement to the contrary shall be void."

Article 794(1) provides:

"1- It shall be permissible for either of the contracting parties, for some unforeseen reason connected with him, to request termination of the lease agreement, and such party shall then compensate for any harm sustained by the other contracting party arising out of such termination, within the limits laid down by custom."

Therefore, based on the experts' report and the application of Articles 249 and 794 of the UAE Civil Code ordered that the tenant was entitled to terminate the lease and the landlord should return the post-dated cheques for the rent for the remaining period.

Comment

We believe that this RDSC judgment is an important judgment and will have an impact on the real estate market in Dubai, as COVID-19 continues to affect businesses, notwithstanding that lockdowns in Dubai have ended and related restrictions have been lifted to a large extent. The RDSC rules on the termination of lease agreements on a case by case basis, as the impact of COVID-19 is different in each sector and it is essential to consider the particular circumstances of each case.

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