

IN THE MATTER OF THE ARBITRATION ACT 1996 (“The 1996 Act”)

AS AMENDED BY, AND IN THE MATTER OF.

THE COMMERCIAL RENT (CORONAVIRUS) ACT 2022 (“The 2022 Act”)

AND IN THE MATTER OF

AN ARBITRATION BETWEEN

(Redacted) LIMITED

CLAIMANT

AND

(Redacted) LIMITED

. RESPONDENT

And in the matter of (Redacted) (“The Hotel”)

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FIRST AWARD ON THE PRELIMINARY LEGAL ISSUE OF WHETHER THE ARBITRATOR HAS  
JURISDICTION TO CONSIDER THE QUESTION OF RELIEF AGAINST PAYMENT OF THE RENT DEBT  
ASSIGNED BY THE LANDLORD TO (Third Party name redacted )

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of

PAUL ROSE LL.M FRICS FCI Arb

ARBITRATOR

5 JULY 2023

## BACKGROUND

1. This award is on a preliminary legal issue which has arisen in an arbitration between the parties under The Commercial Rent (Coronavirus) Act 2022 (“the 2022 Act”). The Claimant is (redacted) Limited which is the tenant of the Hotel. The Respondent is (redacted) Limited which is the Landlord of the Hotel. In this Award I shall refer to each party simply as Landlord or Tenant as appropriate.

## **PARTIES' LEGAL REPRESENTATIVES**

2. In the arbitration, and specifically in this preliminary legal issue, the Claimant tenant is represented by Messrs (redacted) of (redacted) LLP. The Respondent landlord is represented by Messrs (redacted) of (redacted) and (redacted) of (redacted), instructed by (redacted).

## **MY APPOINTMENT AND PROCEEDINGS**

3. Following a referral to the Chartered Institute of Arbitrators, I was appointed as the Arbitrator on 7<sup>th</sup> November 2022.
4. Upon my appointment, I contacted the parties and after various exchanges of correspondence, I convened a case management conference on Thursday 19 January 2023 to discuss and set down procedure. I issued my Order for Directions No 1 dated 23 January 2023. In those Directions, I set out the issue before me under paragraph 7 (i).

## **THE PRELIMINARY LEGAL ISSUE**

5. The issue is whether I have arbitral jurisdiction concerning the assigned debt to (redacted). Therefore, I am asked to rule upon my own jurisdiction, which I hold as a legal principle, that I can do under the general arbitration principle of Kompetenz Kompetenz; and specifically, under S. 30 of the Arbitration Act 1996, to which I refer below in paragraph 7.

## **REPRESENTATIONS**

6. Both parties' legal representatives have made several legal submissions with replies. I have received written submissions from (redacted) on behalf of the Tenant dated 13 February 2023; and by (redacted) instructed by (redacted), on behalf of the Landlord, also of 13 February 2023.

## **STATUTE SEAT AND APPLICABLE LAW**

7. This Arbitration is a statutory arbitration pursuant to Section 94 of the Arbitration Act 1996.
8. The seat of the Arbitration is England and Wales.
9. The applicable law is that of England and Wales.

## **THE LEASE**

**10.** The lease is dated 25 October 2011 wherein the premises, known as the (redacted) of (redacted address) were demised by (redacted) Limited to (redacted) Limited. To clarify, redacted Limited is the former name of the claimant tenant in this arbitration. The reversion subsequently became vested in the Landlord. The Landlord was formerly known as (redacted) Limited.

## **BACKGROUND TO THE ISSUE**

**11.** In my Award, it is worthwhile setting out some background facts to assist in clarifying events.

**12.** The Tenant submitted that the Landlord invoiced the Tenant for £2,415,846 excluding VAT for rent which fell due during the protected period. The protected period is defined by S.5 of the 2022 Act. The Tenant asserts that, while not contesting that sum, it was unable to pay that sum at the time of invoicing because it did not have sufficient cash to do so. The Tenant made a proposal, dated 4 August 2022, to pay £728,567 excluding VAT.

**13.** On 7 August 2020, the shares of the Landlord were transferred to (redacted) Limited and the name of the Landlord company was changed to its present name, (redacted) Limited.

**14.** On the same date 7 August 2020, through a deed of assignment, the Landlord assigned to (redacted name of third party), the Landlord's right to receive payment of the debt payable by the tenant. This debt is called "the (redacted) Debt" which, as above, is the former name of the Tenant. This Debt was assigned together with all causes of action, claims and remedies which the Landlord had in respect of the (redacted) . Hereinafter this is referred to as ("the Assignment").

**15.** The (redacted) Debt is defined as the sum of £732,649.24, of which sum it is alleged that £510,950 reflects the rent which became due under the Lease during the Protected Period as defined in the 2022 Act. This is the period from 21 March 2020.

- 16.** It is not in issue that Notice of the Assignment was given by the Landlord to the Tenant on 15 January 2021.
- 17.** It is unclear from the parties' various submissions whether the figures in my preceding paragraphs 12 and 15 are agreed. In any event, I do not find them relevant to the legal issue that I must decide.
- 18.** In this Award I deal with that part of the rent which fell due during the Protected Period which was the subject of the Assignment as "the Assigned Debt." The issue that I must decide is whether the Assigned Debt is part of the Protected Rent debt; and it is the Protected Rent Debt which is the subject of the issue put before me.
- 19.** This legal issue is complex, as I see from the copious submissions of the parties. In order to assist me I invited the parties to agree upon my engagement of the professional opinion of an experienced legal assessor. The parties duly agreed and suggested a short list of suitable candidates, all of whom were Kings Counsel. Following questions of availability, both parties' legal representatives agreed upon the engagement of (redacted) of (redacted).
- 20.** I prepared a short brief for (name redacted) and invited the parties' legal representatives to agree the contents. The brief was duly agreed and I engaged (name redacted) who, upon studying my brief, together with copies of the parties' submissions and (gender redacted) own research as an Expert, then produced to me (gender redacted) written Opinion ("the Opinion") supported by extensive reasoning.
- 21.** I circulated the Opinion to the parties' legal representatives and invited their comments. Both parties' legal representatives expressed their comments on the Opinion to (name redacted) and I. Reflecting on those comments, (name redacted) advised both the parties' legal representatives and I, that (gender redacted) saw no compelling reason to change (gender redacted) Opinion.

Although the Respondent took some issue with (name redacted) 's reasoning, nonetheless both parties' legal representatives accepted (name redacted)'s conclusion.

22. I am grateful to (name redacted) for (gender redacted) erudite reasoning and conclusion in (gender redacted)'s Opinion, which assists me greatly. I set out below in summary my understanding of (name redacted)'s reasons with which I agree. In summary, I agree with (name redacted) 's conclusion in (gender redacted)'s legal Opinion.

## MY REASONS

### Purpose of the legislation

23. (name redacted) has considered the parties' various submissions, as have I. The parties' submissions and in particular, their approaches taken, made it plain to me that, as (name redacted) put it, the issue is a question of statutory interpretation. As did (name redacted) I did not discern any significant difference between the parties' expressed principles of statutory interpretation and I am grateful to both parties' legal representatives for their clear explanations.
24. The Opinion cited legal authority on statutory interpretation at paragraph 14. Since the parties' comments on the Opinion take no issue with (name redacted)'s general principles of interpretation, I accept the principle in (name redacted)'s citation from Trail Riders Fellowship v Secretary of State for the Environment, Food and Rural Affairs [2022] EWHC 1804 (Admin) where Steyn J at [68] stated: "The words of the statute must be construed in context, with common sense, having regard to the consequences of any proposed construction, and with the aim of giving effect to the legislative purpose of the enactment".
25. In their submissions, both parties have considered the purpose of the 2022 Act in their interpretation of its provisions to establish whether the Assigned Debt is subject to arbitral jurisdiction.

- 26.** The Opinion makes clear that the purpose of the 2022 Act is to make provision for relief from payment of certain rent debts under business tenancies adversely affected through being locked down during the coronavirus pandemic. The Opinion cites the provision in s.1 (1) of the 2022 Act for resolution of relief by arbitration where such relief cannot be resolved by agreement. The Opinion also states that the 2022 Act is designed to preserve the tenant's viability to the extent that relief granted does not affect the landlord's solvency.
- 27.** The Landlord has argued that the purpose of the 2022 Act also seeks to preserve ongoing relations between landlords and tenants rather than relations between tenants and third parties. (name redacted) 's Opinion, with which I agree, is that the purpose of the legislation is to protect tenants from rent debts accrued because of an inability to trade during the protected period.
- 28.** The Landlord also argues that the legislation contains a lacuna which does not deal with the assignment of rent during the protected period. In contrast the Tenant argues that the 2022 Act should not be interpreted in a way that leaves a lacuna. (name redacted)'s Opinion states the principle that statutory interpretation requires Parliament's intention to be determined by reference to the words of the statute. I follow and agree with (name redacted) 's Opinion in this regard.
- 29.** The parties raised four principle relevant issues. These were:
- (1) The nature of the Assigned Debt and effect in law of the Assignment.
  - (2) The definition of "protected rent debt" under the 2022 Act.
  - (3) The point at which the definition of "protected rent debt" must apply.
  - (4) The status if any of (redacted name of third party) in this Arbitration; and if no status, the effect on my jurisdiction under the 2022 Act in relation to the Assigned Debt.

## **Submissions**

### **(1) Nature of the Assigned Debt**

- 30.** The Tenant submitted that the Assignment did not affect their obligations under the lease so that the Assigned Debt was rent due under the lease. The Tenant submitted that (redacted

name of third party) , the assignee of the Assigned Debt, was in no better position than the Landlord in respect of the “protected rent debt” under the 2022 Act. The Tenant’s authority for this proposition was the Court of Appeal in Bexhill UK Ltd v Razzaq [2012] EWCA Civ 1376.

- 31.** The Tenant relies upon the general law that a chose in action will be subject to any existing equities affecting that chose.<sup>1</sup> Further, (name redacted) refers me to paragraph 7-03 of Guest on the Law of Assignment (4<sup>th</sup> edition) where the author states that once notice of an assignment is given, under section 136, the debtor is precluded from setting up new equities after that time. This does not preclude rights of set-off. (name redacted) advises me that under section 136 Law of Property Act 1925 the Assignment was legally completed, vesting a right of action in (redacted name of third party) when notice was given to the Tenant on 15 January 2021. However, prior to 15 January 2021, but after the Assignment, the Landlord could have sued for those arrears which had been assigned to (redacted name of third party). (name redacted) ’s advice is that these principles are not controversial; but do not assist on the legal issue.
- 32.** (name redacted) explains to me that when the notice of assignment was given, the Tenant had no defence to a claim for rent under the 2022 Act. (name redacted) explains, and I accept, that a right to claim relief under the 2022 Act is not an equity. (name redacted) explains that it is different to a right of equitable set off on a cross claim available to the (in this case -tenant) debtor against the (in this case -landlord) assignor because there is no cross claim available for set – off. Rather, the 2022 Act confers a right to apply for relief. Moreover, (name redacted) explains that it is only equities which exist at the time of assignment which will bind the assignee. (name redacted) refers me to the Landlords Reply at paragraph 27.
- 33.** Consequently, (name redacted) does not consider the principles given by the Tenant in relation to the effect of an assignment as helpful. Instead, (name redacted) suggests to me that the answer lies in the interpretation of the statute.
- 34.** The Tenant has argued that the Landlord’s submission is to “modify existing common law rules”<sup>2</sup>. (name redacted) disagrees with this statement. (name redacted) raises the question

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<sup>1</sup> (name redacted) advises that this derives from s.136 (1) Law of Property Act (“LPA”) 1925.

<sup>2</sup> Tenant’s submission paragraph 45

whether the 2022 statute entitles a tenant, who would otherwise have the benefit of the rights under the Act, to relief against an assignee to receive the rent; or not. (name redacted) advises me that the answer to this question lies in the 2022 statute and not s 136 LPA and the general law on assignments.

35. The Landlord argues that, following Lord Esher MR in Read v Brown (1888) 22 QBD 128<sup>3</sup> and referring to the transfer of a debt “...becomes as though it had been his from the beginning”, that the Assigned Debt cannot be rent owed to the Landlord for the purpose of the 2022 Act. Therein lies the difference in the parties’ approach to the impact of the Assigned Debt. (name redacted) advises me that, ultimately, the debt accrued under the lease; and what was assigned to (redacted name of third party) was the right to sue for recovery of that rent.
36. While I found the parties’ representatives legal arguments on assignment interesting, albeit sometimes difficult to follow, I did not find them of particular assistance in determining the present legal issue. Instead, I rely upon (name redacted)’s advice that the focus should be on the provisions in the 2022 Act.

## **(2) Definition of Protected Rent debt**

37. The Landlord’s submission refers to s 1 (1) of the 2022 Act and makes clear that protected rent debts are due from the tenant to the landlord under a business tenancy. The Landlord also refers to s 2(1) of the 2022 Act which defines rent as an amount payable by the tenant to the landlord under the tenancy. (name redacted) advises me that the definition of rent under the 2022 Act is at the core of the Act and correlates with the definition of protected rent debt under s.3 of the 2022 Act.
38. (name redacted) advises me that, under s 2 (2) (b) of the 2022 Act, the meaning of landlord includes a person acting for the landlord; albeit that where an agent collects rent on the landlord’s behalf, the beneficial entitlement to the rent remains that of the landlord.

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<sup>3</sup> Landlord’s Reply paragraph 21

- 39.** In (name redacted) 's consideration of the Tenant's perspective, (gender redacted) advice contrasts this in explaining the principle that an assignee of rent which fell due during the protected period is not acting for the landlord once the assignment is complete, since the assignee acts on its own account in enforcing the assigned debt. However, (name redacted) notes that the word 'includes' within s 2 (2) (b) of the 2022 Act envisages others falling within the meaning of landlord, such as a management company entitled to receive service charges, also classed as rent in the 2022 Act.
- 40.** The Tenant argues that the Assignment confers the right of enforcement of the debt on (third party name redacted) as opposed to the Landlord. Although I find this argument to be persuasive as to that right of enforcement, it does not assist me with the relief afforded to a tenant of payments, due by the tenant to the landlord, which are covered under the 2022 Act.
- 41.** Both parties also refer to sections 14(9) and 14 (10) in the 2022 Act to support their interpretations. The Tenant suggests that these sections should be taken to alter the effect of the tenancy terms in relation to "the protected rent constituting the debt". The Tenant also argues for the origin of the debt namely that the rent debt is a claim due under the lease. Further, that s 14 (9) supports the view that the Assigned Debt is capable of being affected by an award for relief from payment. (name redacted)'s advice to me is that, notwithstanding the origin of the debt being rent that became due under the lease, the Assignee's title to this debt, derives not from the debt's origin, but from the Assignment and notice of the Assignment to the Tenant. The advice to me is that, notwithstanding the Assignment, the Assignee does not become a party to the lease.
- 42.** The Tenant relies on s 14 (10) of the 2022 Act, to support their view that an award under the 2022 Act can affect third parties other than the Landlord and Tenant; specifically, a guarantor, under sub-paragraph (b); and a person other than the tenant who is liable for the payment of rent on an indemnity basis (sub-paragraph (c) . The Tenant argues that this section of the 2022 Act extends the benefit of an award to third parties concurrently liable with the tenant.

Notwithstanding this benefit, the Tenant's argument does not persuade me that the Act is capable of binding a third party who is not a party to the lease, reducing the value of the rent debt to that third party, in the way that a landlord would be bound. (name redacted)'s Opinion is that the specific provision for third parties identified in s. 14 (10) of the Act indicates an intention not to affect other third parties for whom specific provision is not made.

43. The Landlord<sup>4</sup> also refers to s.14 (10) of the Act arguing that this section does not extend relief under the Act to a surety who covenants as primary obligor. Instead, s. 14 (10) covers a guarantee where the guarantor's obligation is dependent on that of the tenant. (name redacted)'s Opinion disagrees with the Landlord's argument and considers it more likely that s. 14 (10) (b) would be interpreted as extending to a guarantor who gives a primary covenant.
44. While I am grateful to both parties' legal representatives for their arguments, I find neither argument to be sufficiently clear as to persuade me either way whether I have jurisdiction or not. Neither argument assists me with my decision.
45. (name redacted) refers me to the moratorium provisions in the Act, namely section 23 and Schedule 2, which impose a moratorium on enforcement of protected rent debts for a period of six months to allow for referral to arbitration. (name redacted)'s opinion is that if the right of action to recover rent due during the protected period is vested in the assignee of that rent debt and not the landlord, the assignee is not subject to the moratorium and could therefore bring a claim for that rent. Consequently, this suggests to (name redacted) that if the assignee is not the landlord, then the assignee, and with it, the Assigned Debt, does not fall within the jurisdiction of the Act. If it were otherwise, the assignee could thwart the provisions for relief by obtaining judgment for the debt.
46. The Tenant suggests that the Assignee would be able to respond to a claim brought for arrears by invoking s. 9 of the Arbitration Act 1996, through a stay of legal proceedings. (name redacted) advises me that if a claim were to be brought by an assignee not subject to the moratorium and if the assignee were not bound by the arbitration provisions of the 2022 Act, then the Court would not have power to stay a claim for the debt under s. 9. If the converse were true then s 9

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<sup>4</sup> Landlord's submission paragraph 56

would apply equally to a landlord's claim against a tenant obviating a need for the moratorium provisions. (name redacted)'s conclusion is that Parliament's imposition of a moratorium on rent debt enforcement by the landlord, but not imposed on third parties, indicates that Parliament did not consider that third parties were bound by the 2022 Act.

47. Both parties also make their respective points on timing. The tenant argues that the Assigned Debt comprises rent when that became payable and the status of the debt cannot change because of an assignment by the landlord to which the tenant was not a party. The Tenant also points out that the 2022 Act is retrospective applying to rent due before the statute was enacted. In contrast the Landlord argues that the 2022 Act is concerned with the position either at the time that the arbitral decision is made or the date of reference to arbitration.
48. While neither party's point on timing are especially helpful to me, (name redacted) advises me that both arguments are correct. Not only is the 2022 Act retrospective, but I must consider whether to grant relief accounting for sections 15 and 16 in considering tenant's viability and the landlord's solvency at the time of my determination.
49. The Landlord's argument draws focus on s. 3 of the 2022 Act which defines a "protected rent debt". This is a rent debt which is unpaid both at the time of the reference and also when the determination is made so as to be eligible for a debt relief order. The landlord argues that the nature of the debt might change such that a debt to a third party is not rent. The crux of the landlord's argument is that the assignment to a third party of the right to receive rent payable to a landlord, means that the debt is no longer rent for the purposes of the 2022 Act. In this focus, the landlord refers to the protected rent debt falling due under a business tenancy. It is not in issue that the subject matter comprises a business tenancy. The Landlord raises the point that a tenant might cease trading because of the pandemic and, in so doing, cease to be a business tenancy. (name redacted) advises me that the cessation of application of the 1954 Act<sup>5</sup> would not affect the accrual of arrears that would be subject to relief under the 2022 Act. The Landlord makes the point that the 2022 Act focuses on the tenant's viability at the time of my determination; so if the tenant's business by that time is no longer viable, then relief will not be available under s 13(3). Under that circumstance I would not have jurisdiction to grant relief.

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<sup>5</sup> Landlord and Tenant Act 1954

50. The Tenant has argued that because the 2022 Act applies to rent accrued before the Act came into force, the Assigned Debt is subject to the Act. (name redacted) 's opinion is that this argument does not necessarily follow. Conversely and equally, it also does not follow that consideration of circumstances at the time of my determination means that the circumstance of a rent debt having been assigned ceases to be subject to the Act. I am grateful to (name redacted) for (gender redacted) views on both arguments, However, I, too, find that neither argument prevails to the as to assist me in determining my jurisdiction.

### **Process for Relief**

51. The parties have also submitted argument on the process for relief under the 2022 Act. It is these arguments which I find the most helpful to me.

52. (name redacted) reminds me that sections 9 (1) and 9 (2) of the 2022 Act relate to the reference to arbitration. In both subsections, reference is made to the landlord and the tenant. No other party is mentioned. (name redacted) also points me to s.10(1) of the 2022 Act which provides for either of the landlord or the tenant, whichever is the applying party, to give notice of their intention to make a reference to arbitration with a response to be submitted by the other party within 14 days. (name redacted) 's opinion is that the procedures within these sections all suggest an arbitral process between landlord and tenant only and not any third party. (name redacted) also advises me of the provisions in s. 15 (1), wherein I must balance the viability of the tenant's business and the preservation of the solvency of the landlord.

53. The Landlord argues the point on procedure that it makes little sense for me to make that balance in relation to the Assigned Debt. The point is made that, in seeking that balance in S 15 (1), the Landlord's solvency is irrelevant to whether I grant relief from payment in respect of the Assigned Debt. Moreover, if the machinery for me to determine whether relief should be awarded can be argued as having broken down insofar as my consideration of granting relief from payment of the Assigned Debt is concerned, then the Landlord's argument must prevail. (name redacted)'s opinion is that if the mechanism in the Act for me to determine whether to

grant relief cannot operate, then it is unlikely that Parliament intended the Assigned Debt to be subject to the Act's provisions for granting relief.

**54.** The Landlord also submits<sup>6</sup> that if the solvency of the landlord was relevant and the whole of the protected rent had been assigned, I would have to have regard to the solvency of the landlord where the entire debt is payable to a third party.

**55.** The Landlord also argues that the Assignee is not a party to the Arbitration. To repeat my paragraph 52, there is no provision in sections 9 and 10 of the Act to include a third party. The Landlord further argues that if the effect of the 2022 is that a protected rent debt assigned to a third party who is not the landlord, is subject to an award for relief, but the assignee is not a party to the arbitral process, as stated above, that is contrary to article 6 of the European Convention on Human Rights ("ECHR") i.e., the right to be heard. (name redacted) advises me that s.3 (1) of the Human Rights Act 1998 ("HR Act") requires legislation to be read and given effect in a way compatible with the (European) Convention rights. (name redacted) advises me that by s.3 HR Act, if it is possible to interpret the 2022 Act in a way that is not contrary to article 6, such an interpretation should prevail

**56.** The Tenant has argued<sup>7</sup> that there is justification on the facts for me to grant relief in respect of the Assigned Debt without the Assignee being a party because of the close connection between the Landlord and the Assignee. (name redacted) suggests to me that this argument is questionable because the interests of the two entities may not be wholly aligned. I agree with (name redacted)'s observation and I am not persuaded by the Tenant's argument on this point. I have not been presented with any evidence to suggest a sufficient alignment to include the terms of the Assignment and surrounding circumstances in support of this proposition. In any event, (name redacted) advises that the answer to the question of whether I have jurisdiction must be tested by supposing that there is no connection between the Landlord and the Assignee. This is because there is nothing in the Act which provides a means for distinguishing between the two cases.

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<sup>6</sup> Landlords submission paragraph 61

<sup>7</sup> Tenants submission paragraphs 67 - 73

57. (name redacted) notes, as do I, that the Tenant's submissions do not deal with the procedural issue whereby I should consider giving relief on the Assigned Debt without (redacted name of third party assignee) being a party to the Arbitration. Because (redacted name of third party assignee) is not a party to the Arbitration, they do not have the right to be heard. Neither can (redacted name of third party assignee) be bound by any award granting relief; a point which the Tenant concedes.<sup>8</sup>.Neither has it been argued that, under s 14 (9), the effect of any award is to alter the amount due to (redacted name of third party assignee) under the Assigned Debt, irrespective of whether they are a party. (name redacted) considers such an interpretation unlikely in any event, because (redacted name of third party assignee) has no right to be heard.

58. The Tenant contends that the Assigned Debt is a protected rent debt subject to the arbitral process, and yet (redacted name of third party assignee) cannot be a party to that process because it is not the landlord. Accordingly, the Tenant suggests that it must be open to the parties to the arbitration to compromise the arbitration. However as in my paragraph 57 above, the Tenant concedes that (redacted name of third party assignee) could not be bound by any agreement between the Landlord and the Tenant which affords relief in respect of the Assigned Debt. I agree with the Tenant's suggestion; although (name redacted) 's opinion is that no such agreement is likely in this case without (redacted name of third party assignee) being party to that agreement because of the connection between (redacted name of third party assignee) and the Landlord.

### **My conclusion and decision**

59. I am obliged to the Tenant for having had regard to the purpose of the 2022 Act. (redacted name) 's advice is that it is unlikely that Parliament intended that a Landlord could assign a rent debt possibly to a connected entity so as to put the debt out of reach of any arbitral jurisdiction under the 2022 Act. It is trite that such an intention would undermine the purpose of the legislation. Neither party disputes that the Assignment had a genuine commercial purpose.

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<sup>8</sup> Tenants submission paragraph 64.

60. The Landlord suggests that there is a loophole in the 2022 Act which was unforeseen by the draftsman. (name redacted)'s advice is that this conclusion appears unsatisfactory, and if it can be avoided by interpretation, then an arbitrator or court should avoid it. I must agree with the advice given to me, especially given the arguments presented.
61. (name redacted) advises me that under the 2022 Act, the expression 'landlord' can be extended to an assignee of the right to receive that rent. Moreover s 2 (2) of the 2022 Act does not define 'landlord'. Consequently, under the 2022 Act, the 'landlord' is a party with the right to receive rent under a business tenancy. The Tenant's position is that, notwithstanding that the Assignee is not a party to the business tenancy, the origin of the Assigned Debt is the lease .
62. (name redacted) also advises me that the term 'landlord' which is ordinarily used to describe the entity entitled to the reversion of the property interest, need not be limited. (name redacted) also advises me that there is no specific statutory definition of 'landlord' in the 2022 Act. (name redacted) cites me authority, already made known to the parties<sup>9</sup> that an assignment of a right to receive rent is an assignment of an interest in land, notwithstanding that the assignee does not have the same interest as an assignee of the reversion.
63. (name redacted)'s advice, with which I agree, is that it is possible to interpret s 2(1) of the 2022 Act whereby the Assigned Debt is within the meaning of 'protected rent debt'. The Tenant's argument of origin of the Assigned Debt in conjunction with this argument combines to support my initial inclination to find for the Tenant.
64. In contrast, the Landlord has argued for the process of relief and the injustice to an assignee who is not a party to the arbitration not having the right to be heard. (name redacted) does not consider that the 2022 Act can be construed as entitling a tenant to refer an assigned rent debt to arbitration, without that assignee having the right to participate in the arbitration. I have noted above within my reasoning that the 2022 Act does not mention assignments of rent debts. (name redacted) also advises me that, based on the identity of the parties to arbitration, arguably, I could not consider the solvency of the Assignee when assessing the tenant's viability; whereas this assessment is required in the case of the landlord<sup>10</sup> As to the position of a

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<sup>9</sup> *Inland Revenue Commissioners v John Lewis Properties Ltd* [2002] 1 WLR 35

<sup>10</sup> S.15 the 2022 Act.

guarantor or other parties who might benefit from relief on the rent debt<sup>11</sup>, (name redacted)'s opinion is that the position of an assignee is not comparable.

65. For these reasons, (name redacted)'s opinion is that an assigned rent debt cannot be within the scope of the 2022 Act, and thus a 'protected rent debt', if the assignee is not a landlord for all purposes of the 2022 Act. Therefore, if the 'landlord' can be interpreted as including an assignee of a 'protected rent debt' within the argument to which I refer in my paragraph 62 above, and as contended by the Tenant, the assignee must be party to a reference to arbitration for determination of relief of the rent debt to that assignee. (name redacted) advises me that in his view, this proposition is arguably permissible by the absence of a definition of 'landlord' under the 2022 Act. (name redacted) advises me that if he is wrong and an assignee is not capable of being a party against whom a reference to arbitration can be made, then it follows that the expression 'landlord' must have the narrow meaning argued by the landlord; in which case a rent debt assigned by the landlord will fall outside the scope of the 2022 Act.
66. (name redacted)'s advice to me is that, in (gender redacted) view, an assigned rent debt is subject to the Act as contended by the Tenant. My initial view is in my paragraph 63 above and I agree with (name redacted)'s logic and conclusion. I find the Tenant's argument persuasive, to the extent that the assigned rent debt is subject to the Act, but tempered by process, highlighted by the Landlord, in that a reference to arbitration in respect of the assigned debt, to quote (name redacted): "must be made against the party entitled to the debt."
67. (name redacted) has commented that, had the Tenant commenced an arbitration against (redacted name of third party assignee), then the assigned debt would be subject to relief because (redacted name of third party assignee) would be a party to the arbitration. However, because the Tenant did not commence an arbitration against (redacted name of third party assignee), but only commenced arbitration against the Landlord, (redacted name of third party assignee) has no right to be heard, as stated above. I agree with (name redacted)'s conclusion. For me to make any determination in respect of the Assigned Debt would contravene that third party's rights under article 6 ECHR; and in any event would not make my Award enforceable.

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<sup>11</sup> See my paragraphs 41-43 above

68. Had the Tenant pursued a reference against (redacted name of third party assignee) under sections 9 and 10 of the 2022 Act, as advised by (name redacted) in paragraph 66 of (gender redacted) Opinion, then the result of my deliberation might be different. However, the Tenant did not take that step.

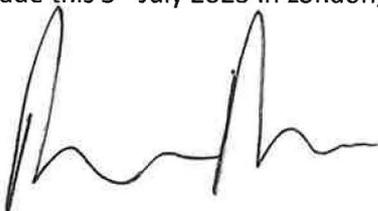
69. Consequently, pursuant to section 30 of the Arbitration Act 1996, I lack jurisdiction in respect of the Assigned Debt. I must hold my decision to that effect.

70. I add that I circulated (name redacted)'s Opinion to the parties and sought their observations. Both parties did submit their responses which I put to (name redacted) to provide him with an opportunity to review and edit his Opinion as (gender redacted) saw fit. (name redacted) has confirmed to me that (gender redacted) read the party's responses and declined to alter (gender redacted) Opinion. I end my decision and conclusion by expressing my sincere thanks to the parties' legal representatives for their erudite arguments; and, to my legal expert, (name redacted) for (gender redacted) valuable Opinion on a subject, for which, to my knowledge, there is no legal precedent.

**71. NOW I, PAUL ROSE, DECLARE, DIRECT AND AWARD:**

1. That I have power to rule upon my own jurisdiction under section 30 of the Arbitration Act 1996.
2. That pursuant to that power, that I hold that I do not have jurisdiction to make any determination in respect of the Assigned Debt in this reference.
3. Costs reserved to a final Award on the applicable relief to be granted under the 2022 Act.

Made this 5<sup>th</sup> July 2023 in London, England.

A handwritten signature in black ink, appearing to read 'Paul Rose', with a stylized, cursive script.

**PAUL ROSE LL.M FRICS FCI Arb Chartered Arbitrator.**