

Landlord's Failure to Provide Peaceable Enjoyment Due to COVID-19 Relieves Tenant from Obligation to Pay Rent

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September 15, 2020

On July 16, 2020, the Quebec Superior Court (the Court) released its decision in *Hengyun International Investment Commerce Inc. v. 9368-7614 Quebec Inc.*, 2020 QCCS 2251 in which it considered, among other things, the effect of the March 24, 2020 Order in Council 223-2020 from the Government of Quebec suspending certain non-essential commercial facilities during the COVID-19 pandemic (the Decree). The plaintiff (landlord) and defendant (tenant) were parties to a lease for a gym and brought numerous disputes before the Court, including whether the tenant should be relieved of its obligation to pay rent for the period for which the Decree was in force on the basis that the landlord failed to provide peaceable enjoyment.¹

The tenant argued that the Decree was "superior force" (*force majeure*), relieving the tenant of the obligation to pay rent on the basis that the landlord did not provide peaceable enjoyment. The tenant argued that, where a landlord fails to perform an obligation under the lease, including the obligation to provide peaceable enjoyment, a tenant can claim a reduction in rent and sue a landlord for damages.

The landlord argued that the Decree did not constitute *force majeure*, and that even if it did, a provision in the lease required the tenant to pay rent notwithstanding an event of *force majeure*. In addition, the landlord argued that the tenant received a government emergency loan of \$40,000 in the context of the COVID-19 pandemic and cannot argue that it was prevented by a "superior force" from paying rent. The Court rejected this argument and held that the landlord was precluded from claiming rent for the months of March, April, May and June, 2020.

The Court held that the landlord was prevented by a "superior force" from fulfilling its obligations to the tenant to provide it with peaceable enjoyment of the premises. Although the tenant still had access to the premises, continued to store its equipment there and benefited, to some extent, from services, the lease provided that the premises is to be used "solely as a gym" and this activity was prohibited by the Decree. As a result, the Court's view was that the tenant had no peaceable enjoyment of the premises while the Decree was in force.

The Court interpreted the *force majeure* provision of the lease to contemplate the delay in the performance of obligations, but not obligations that cannot be performed at all. Because the landlord could not provide peaceable enjoyment of the premises from March through June of 2020, then the landlord cannot insist on payment for rent of that period and the *force majeure* clause in the lease does not apply. The Court noted that, although parties to a lease can agree to limit the impact of a landlord's failure to provide peaceable

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enjoyment, they cannot agree to exclude it altogether, which is a view that has been "expressed in doctrine and endorsed by the Court of Appeal."

Key Takeaways

It is an appropriate time for franchisors and others in the franchise industry to review lease provisions regarding *force majeure*. Going forward, it will be imperative to ensure lease provisions are appropriately drafted as courts will take a circumstance-specific approach to determining disputes regarding *force majeure* especially during the COVID-19 pandemic.

¹ In Quebec, a tenant's entitlement to peaceable enjoyment is found at Article 1854 of the *Civil Code of Québec*, CQLR c CCQ-1991:

1854. The lessor is bound to deliver the leased property to the lessee in a good state of repair in all respects and to provide him with peaceable enjoyment of the property throughout the term of the lease.

He is also bound to warrant the lessee that the property may be used for the purpose for which it was leased and to maintain the property for that purpose throughout the term of the lease.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.