

The “loss of the leased property”: The legal basis relied upon to relieve a commercial lessee from its obligation to pay the rent during the first lockdown

As indicated in a recent article ^[1], the payment of commercial rents during successive lockdown periods is an issue that has given rise to numerous disputes.

In that article, we pointed that arguments based on force majeure, unforeseeability (a French law concept close to that of hardship) or non-performance, often used by lessees as a justification for not paying rent, had been dismissed in the majority of court decisions handed down on this subject. In this context, the preferred course of action seemed to be the renegotiation of the lease agreement and its adaptation to the circumstances, as per the principle of good faith that governs the performance of contracts.

On January 20, 2021, the enforcement judge of the Paris Judicial Court ^[2] opened up another way based on the “loss of the leased property”.

In order to grant a commercial lessee’s request for the release of the garnishment of rents accrued during the first lockdown, the judge held that the **legal impossibility of operating the leased premises during the term of the lease, resulting from a decision of the public authorities, is comparable to the loss of the**

leased property, as provided for in Article 1722 of the French Civil Code^[3]. Consequently, the lessee could not be required to pay rents for the period from March 16 to May 11, 2020.

Even if it is at this stage only a first instance decision, the loss of the leased property appears to be a serious alternative to force majeure and unforeseeability, which, as we have seen, could not be relied upon in relation to the issue of rents in a health crisis context. Indeed, it should be noted that for many years now, French case law has applied Article 1722 of the French Civil Code in cases where, due to a legal or administrative decision made during the lease period, the leased property may not legally be used for its intended purpose. It will be tempting for the lessees to make a parallel with the administrative closure of the shops because of Covid-19.

It is very likely that the lessor will lodge an appeal against this decision, which suggests that there will be many court decisions to come on this subject.

[1] See our article entitled [The impact of COVID-19 on commercial lease agreements](#) published on our Blog in December 2020

[2] Paris Judicial Court - No. RG 20/80923

[3] *"If, during the term of the lease, the leased property is destroyed in its entirety by a fortuitous event, the lease is terminated ipso jure; if it is destroyed only partially, the lessee may, depending on the circumstances, request either a reduction in the price or the termination of the lease itself. In either case, there is no need for any compensation"*.

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