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c.nommick@soulier-avocats.com

Tel.: + 33 (0)4 72 82 20 80, + 33 (0)1 40 54 29 29

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Tribune de Lyon 2021 Legal Guide: “How to justify the non-payment of commercial rents during the health crisis?”



The 2021 Legal Guide published by [Tribune de Lyon](#) offers precise and pragmatic answers to concrete issues faced by business owners/managers.

[Catherine Nommick](#) contributed to this Guide through an article entitled “**How to justify the non-payment of commercial rents during the health crisis?**”.

This article is reproduced below and a courtesy English translation follows.

Comment justifier le non-paiement de ses loyers commerciaux en période de crise sanitaire ?



Maître Catherine Nommick
AVOCAT ASSOCIÉ, SOULIER AVOCATS

Focus sur une récente décision du juge de l'exécution ayant libéré le locataire du paiement des loyers.

Le sort du paiement des loyers commerciaux durant les périodes successives de confinement a déjà fait l'objet d'un important contentieux.

Les arguments tirés de la force majeure, de l'imprévision ou de l'exception d'inexécution, souvent opposés par les locataires pour justifier du non-paiement des loyers, ont à ce jour été rejetés par la majorité des décisions rendues en la matière. Dans ce contexte, la voie à privilégier semble être la renégociation du contrat de bail, sur le fondement de la bonne foi contractuelle.

Une possible voie depuis le 20 janvier 2021

Or, le 20 janvier 2021, le juge de l'exécution du tribunal judiciaire de Paris (n° RG 20/80923) a ouvert une autre voie en décidant que l'impossibilité juridique d'exploiter les lieux loués survenue en cours de bail, résultant d'une décision des pouvoirs publics, est assimilable à la perte de la chose louée, telle que prévue à l'article 1722 du Code civil. Dès lors, la société locataire ne pouvait en l'espèce se voir réclamer le paiement des loyers pendant la mesure administrative dite de confinement, instaurée du 16 mars au 11 mai 2020. Il ne s'agit bien sûr pour le moment que d'une décision de première instance, dont la valeur reste à confirmer. Néanmoins, on peut imaginer que la « perte de la chose louée » sera largement opposée dans les contentieux à venir, dans les cas où le locataire se trouve dans l'impossibilité de jouir de la chose louée à raison d'une décision administrative de fermeture.



“How to justify the non-payment of commercial rents during the health crisis?” [\[1\]](#)

Catherine Nommick, Partner, Soulier Avocats

Focus on a recent decision of the Enforcement Judge who relieved a lessee from its obligation to pay the rents.

The payment of commercial rents during successive lockdown periods is an issue that has given rise to numerous disputes.

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 rents, have 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, as per the principle of good faith that governs the performance of contracts.

However, on January 20, 2021, the Enforcement Judge of the Paris Judicial Court (No. RG 20/80923) opened up another way in ruling 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. As such, the lessee company could not be required to pay rents during the administrative “lockdown” measure, i.e., from March 16 to May 11, 2020

At this stage, it is of course only a first instance decision that needs to be upheld. Yet, the “*loss of the leased property*” will conceivably be relied upon in future disputes where lessees are unable to use the leased property because of an administrative closure measure.

[\[1\] An extended version of this article is available on our Blog: 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](#)

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