

The High Court offers no comfort for beleaguered retailers

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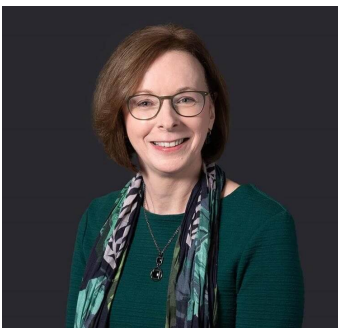
Although restrictions on landlords enforcing remedies for unpaid rent have been in force since the start of the pandemic, a tenant still remains liable for that rent (unless a deal has been reached with its landlord).

Commerz Real Investmentgesellschaft mbh v TFS Stores Ltd [2021] EWHC 863 (Ch) (16 April 2021)

The plight of The Fragrance Shop in the Westfield Shopping Centre at Shepherd's Bush will be echoed by many tenants up and down the country. In [this case](#), The Fragrance Shop has not paid any rent since April 2020 and owes over £160,000 in unpaid rent and service charge. Government restrictions have meant that The Fragrance Shop has had to close its shop for large parts of that time. However, despite this, its landlord has obtained summary judgement for those arrears. All the arguments put forward by The Fragrance Shop in its defence based on the government's voluntary Code of Practice, the potential to undermine the current restrictions on landlords' remedies, the extent of the landlord's insurance obligation and the construction of the rent suspension clause were given short-shrift by the judge. He felt that The Fragrance Shop had no real prospect of defending the landlord's claim to recover the arrears.

Whilst this decision may not be surprising, it will undoubtedly send a chill down the spine of retailers in a similar position to The Fragrance Shop. Last week the government published a call for evidence on what to do when the current restrictions on landlords' remedies expire at the end of June. Retailers can only hope that the government finds a way of fulfilling its promise of preserving tenant businesses and the millions of jobs that they support.

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