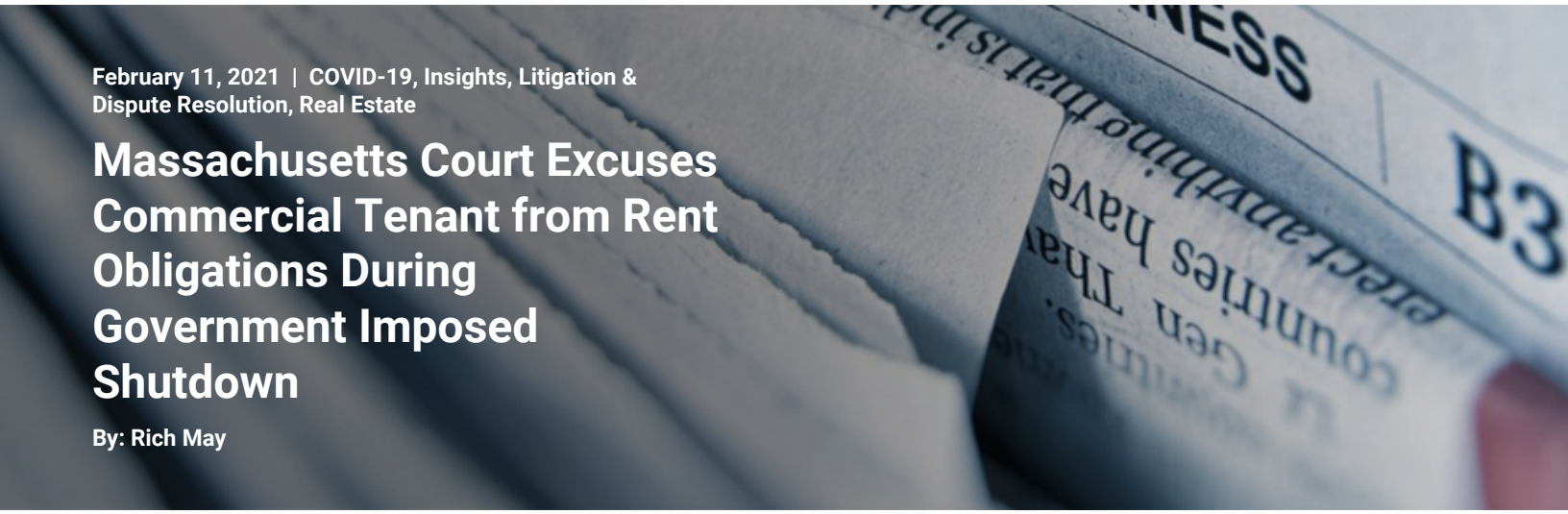

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Massachusetts Court Excuses Commercial Tenant from Rent Obligations During Government Imposed Shutdown

By: Rich May

In a decision dated February 8, 2021, the Massachusetts Superior Court (Business Litigation Session) found that a commercial tenant was excused from its rent obligations under the doctrine of frustration of purpose. This ruling by Judge Salinger in *UMNV 205–207 Newbury, LLC v. Caffé Nero Americas, Inc.* (2084CV01493-BLS2) is the latest decision addressing the fallout from the coronavirus pandemic and the corresponding state and local orders which disrupted business during much of the last year.

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The facts of the case are all too common: A café was temporarily closed due to Governor Baker's orders issued in late March of 2020. Unable to generate income, the café ceased paying rent to its landlord. Even as the restrictions imposed on the café were slowly lifted, and activities such as outdoor seating were permitted, the café's business struggled to recover. The café attempted to negotiate with its landlord for a rent abatement and/or modification to no avail. After a notice of termination from the landlord the café vacated the premises and the landlord sued for recovery of the unpaid rent plus interest, liquidated damages, the acceleration of the rest of the 15-year lease, and attorneys' fees and expenses.

The landlord moved for summary judgment on its claims which the Court denied. Instead, the Court granted partial summary judgment for the café even though the café had not moved for summary judgment itself.

The Court based its ruling on the doctrine of frustration of purpose. This doctrine is one of several theories potentially available to parties whose contractual obligations were disrupted by the pandemic (for an overview of these theories, see our earlier blog entry). The concept is straightforward: Where the principal purpose of a contract is substantially frustrated by something unexpected, a party may be excused from performing its duties under the contract. In this case, because the Governor's orders temporarily frustrated the purpose of the café's lease, the café was excused from making rent payments during that period of time. The Court even went a step further and found that the landlord's notice of default and termination was in error and ineffective because the frustration of purpose

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meant that there was no default as the landlord alleged in its notice.

Much of the Court's ruling is highly fact specific and may not be applicable to other tenants with different leases. Critically, the café's lease provided that the rented space could be used "solely" for "[t]he operation of a Caffé Nero themed café under Tenant's Trade Name and for no other purpose." If the tenant had been able to use the space for other purposes, the outcome may well have been different. The Court also found that the specific language in the lease's "Force Majeure" and "Independent Covenants" provisions was not inconsistent with the doctrine of frustration of purpose. While not all of this analysis will be applicable to other cases, the Court did conclude that "[i]t would have made no business sense for the parties to enter into a lease providing that Caffé Nero may only use the leased premises for one narrow purpose, but must keep paying rent even if the only permissible use is no longer allowed or possible." While landlords might argue that is precisely what is intended by certain lease provisions, this ruling shows that courts may interpret contractual language differently, especially in light of recent facts and circumstances.

The matter of *UMNV 205–207 Newbury, LLC v. Caffé Nero Americas, Inc.* (2084CV01493-BLS2) is not concluded. In its Summary Judgment ruling the Court did not reach issues such as other missed rent payments after the Governor's orders were relaxed or the vacating of the property by the café. However, this ruling is one data point that suggests some tenants may be able to push back against the general assumption that commercial rent obligations were undisturbed by the pandemic and the Governor's orders. It is also a caution to landlords who may seek to enforce rent obligations and/or evict tenants over missed payments during the height of the pandemic.

Disclaimer: This summary is provided for educational and information purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys Nathaniel Donoghue or Jeff Loeb.

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