



First Supreme Court decision on covid-19-related rent reductions

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The Austrian Supreme Court recently held that a commercial tenant was entitled to a 100% rent reduction for April 2020 due to the governmental restrictions in connection with the covid-19 pandemic. Unfortunately, the decision leaves many questions unanswered.

Facts

The case concerned premises rented for the purposes of operating a sunbed studio, including the sale of drinks and cosmetics. The facts of the case are somewhat peculiar, because the tenant had already concluded an enforceable termination agreement with the landlord, which entitled the landlord to request immediate eviction if the tenant defaulted on rent payments.

In April 2020, the government's covid-19 regulations prohibited the tenant from opening the studio to the general public. The tenant thus refused to pay the rent for that month, and the landlord requested immediate eviction due to non-payment of rent.

Decision

The Supreme Court made the following key points:

- The governmental restrictions in connection with covid-19 are a force majeure event, which entitles tenants to rent reductions.
- The amount of the reduction depends on whether the premises can be partially used or not used at all.

In the case at hand, a potential use of the premises for office or storage purposes was found to be irrelevant, because there had been no products stored, and the premises could not have been reasonably used for office purposes during lockdown while the studio was closed. The fact that the sunbeds and other furniture had been stored on the premises was deemed to be irrelevant as well. The tenant, therefore, did not owe the landlord any rent for the month of April 2020.

The judgment, however, did not answer the following general questions:

- whether a tenant can have a reduction of only the rent or also the ancillary cost (service charges);
- to what extent the rent is reduced if there are goods stored on the premises;
- to what extent the rent is reduced in case the premises can be partially used, such as for click and collect orders or professional shopping activities;
- the effect of government subsidies on tenants' rent reductions; and
- whether either party can terminate the lease as a result.

Comment

For procedural reasons, this decision was passed by the Supreme Court's third chamber. This chamber deals with enforcement law matters, whereas the fifth chamber is specialised in tenancy law. A lead decision by the fifth chamber is expected to follow, which will answer the questions raised above.

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