



BREXIT IS NOT A FRUSTRATING EVENT

FEBRUARY 2019

In a previous article, we looked at a case pending judgment in the English High Court ([Could Brexit constitute a frustrating event for leaseholders?](#)) in which the tenant (the European Medicines Agency (EMA)) sought to break its lease on the grounds that it had been frustrated by Brexit.

In a little bit of good news for landlords (and contracting parties generally) the High Court has ruled that the EMA cannot use the excuse of Brexit to break its 25 year lease in Canary Wharf.

The judge found that although there were strong political reasons for an agency of the EU such as the EMA to have its headquarters in Europe after 29 March, there was no rule of law (either EU law or international law) that required this. In addition, despite the EMA's argument to the contrary, the EMA did not lack capacity either to pay rent or to otherwise deal with a property outside the EU.

Accordingly, Brexit had not made the contract impossible to perform – Brexit had not prohibited the EMA from keeping its headquarters in the UK or from meeting its obligations under the lease.

In addition, whilst the parties could not have predicted the UK's departure from the EU when they entered the lease, the parties had considered at the outset the possibility that the EMA may relocate and had negotiated the lease and allocated risk on that basis. Strong protections had been included in the lease to protect the landlord's interests should the EMA relocate, the landlord had successfully resisted the inclusion of a break clause and the EMA had received inducements in the rent for entering into such a long lease. It could not be said that the EMA's relocation was "entirely beyond what was contemplated by the parties when they entered the contract" - the reason for any future relocation by the EMA was irrelevant.

This case is significant for all commercial contracts that may be affected by Brexit – whilst every case turns on its own facts, and the EMA may well appeal given the sums involved, it seems unlikely that parties will be able to claim that Brexit is a frustrating event even though it was not specifically contemplated when the contract was entered into. The position may of course change if the EMA does appeal the decision, so watch this space.

Parties concerned that Brexit may lead to uneconomical or disadvantageous consequences should review their contracts with this case in mind, engage with counterparties to mitigate risks and, where necessary, take appropriate legal advice.

FOR MORE INFORMATION PLEASE CONTACT:

WE ARE OFFSHORE LAW

BVI // Cayman // Guernsey // Jersey // London // Singapore





MICHAEL MORRIS

Group Partner // Guernsey

t:+44 (0) 1481 734263 // e:michael.morris@collascrill.com



DONALD MILLAR

Senior Associate // Guernsey

t:+44 (0) 1481 734828 // e:donald.millar@collascrill.com



SHELAGH MASON

Consultant // Guernsey

t:+44 (0) 1481 734239 // e:shelagh.mason@collascrill.com



ANNA DOUGLASS

Senior Associate // Guernsey

t:+44 (0) 1481 734291 // e:anna.douglass@collascrill.com



PAIGE WILLIAMS

Paralegal // Guernsey

t:+44 (0) 1481 734251 // e:paige.williams@collascrill.com

WE ARE OFFSHORE LAW

BVI // Cayman // Guernsey // Jersey // London // Singapore

