

COURT TO DECIDE IF BREXIT MEANS FRUSTRATING TIMES FOR THE UK REAL ESTATE MARKET, WARNS HERBERT SMITH FREEHILLS

24 January 2019 | London
Firm news

As the UK awaits the verdict in a landmark case set to determine if Brexit is an event capable of rendering commercial leases of real estate invalid, Matthew Bonye at Herbert Smith Freehills suggests that "with hundreds of thousands of tenancy agreements in place across the country, the outcome of the case goes far beyond one building in Docklands and could have a direct and immediate impact across the UK economy."

Bonye, a partner and head of real estate dispute resolution at Herbert Smith Freehills, was sharing his views in an interview with Tom Leech QC, broadcast in [a podcast released today](#). During the discussion he focused on a current case - Canary Wharf vs European Medicines Agency (EMA) - in which the High Court is deciding whether Brexit triggers the legal doctrine of "frustration". If it does, EMA would be released from a £13m per year lease due to expire in 2039, meaning a potential loss of the future £260 million rental income for the landlord under that lease.

Focusing on the implications of the impending decision, Bonye said: "If the decision is one that releases EMA from its contract, we may see a torrent of similar cases - attempts by tenants to try to apply the facts of this case to their own leases. However, two key questions on this particular case are whether Brexit was foreseeable when the contract was agreed eight years ago and the extent to which EMA can exit the lease by simply assigning it to a new tenant. Both issues, when put together, suggest that it is unlikely that this particular lease will be considered to be frustrated by Brexit."

Bonye added: "This specific case revolves around a lease with broad user and alienation provisions, but no break clause. Suggestions are that the real, underlying, cause of the tenant's problem is that it does not have an assignee to take over the lease."

"The implications are huge as tenants may be looking for ways in which they can extricate themselves from long-term agreements, thus impacting the financial performance of landlords across the country. However, it is vital to remember that this case relies on very specific facts and it is too soon to say where the ramifications may be felt. That said, whichever way the case is decided, an appeal is likely due to the sums involved. That's why this kind of case looks suitable for a leapfrog appeal to the Supreme Court. The original doctrine of frustration may be centuries old, but it raises an important issue of law which is relevant to the state of the economy in the present day".

About Herbert Smith Freehills

Operating from 27 offices across Asia Pacific, EMEA and North America, Herbert Smith Freehills is at the heart of the new global business landscape providing premium quality, full-service legal advice. The firm provides many of the world's most important organisations with access to market-leading dispute resolution, projects and transactional legal advice, combined with expertise in a number of global industry sectors, including Banks, Consumer products, Energy, Financial buyers, Infrastructure & Transport, Mining, Pharmaceuticals & Healthcare, Real estate, TMT and Manufacturing & Industrials.

www.herbertsmithfreehills.com

Follow us on Twitter [@HSFPressOffice](https://twitter.com/HSFPressOffice)

MEDIA CONTACT

For further information on this news article, please contact:

**MIKE PETROOK, COMMUNICATIONS
MANAGER**

LONDON

Tel: +44 20 7466 3939

Email: mike.petrook@hsf.com