



HIGH COURT DECIDES BREXIT CANNOT BE DEEMED A 'FRUSTRATING' EVENT

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News

Responding to the news that the High Court has today handed down a judgment declaring that Brexit cannot be used as an excuse for tenants to break lease agreements, Matthew Bonye – a partner at Herbert Smith Freehills – says: "This is a knock-down punch against the EMA. For Canary Wharf it needed to be. Even in a case with facts as extreme as this – featuring an EU entity as a tenant – the possibility of frustration creeping in to dismantle this valuable lease investment has been discounted."

Bonye, head of real estate dispute resolution at Herbert Smith Freehills, adds: "Landlords should be content. Of course, the judge has not said that this legal doctrine can never apply to leases, nor that Brexit can never be a frustrating event in a contract. But based on his conclusions I doubt that any lease now in existence could be a passable candidate to attempt the argument. "

Bonye's comments come as Mr Justice Marcus Smith decided that Brexit is not a "frustrating event" in the case of Canary Wharf vs European Medicines Agency (EMA). As a result of this decision EMA will not be able to release itself from a £13m per year lease due to expire in 2039, meaning the landlord's income of £260 million over the next 20 years has been safeguarded."

He concludes: "We need to count the judgment as "round one" in what may be a protracted bout. The EMA threw everything it could at the case, including adding an extra argument mid-case, unsuccessfully, that just paying rent would be beyond its legal powers post-Brexit. I do not see the EMA giving up now. Equally, on the basis most leases are not granted to EU bodies and, just like the EMA's own lease, contain permissive alienation provisions, the general risk to commercial landlords appears to be low."

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