


CASE SUMMARY: Sneakerboy Retail Pty Ltd v Georges Properties Pty Ltd (No 2) [2020] NSWSC 1141

Description: Impact of NSW government's COVID-19 leasing relief measures upon commercial retail shop lease.

	
49	Landlord and tenant
49K171-K208	Termination of the tenancy
49K191-K203	Forfeiture
49K199-K203	Relief against forfeiture
49K199	Equitable relief

commercial retail shop lease — conditions of reinstatement — discretion to modify terms — impact of COVID-19 regime — leasing principles — requirement to renegotiate in good faith — powers of court

Did the COVID-19 measures affect the court's power to reinstate the lease?

The plaintiff's commercial retail lease was terminated by its landlord shortly prior to the introduction of measures providing relief from the impact of the COVID-19 pandemic. But for the termination, the lease would have become subject to the protective regime. In a prior decision, the court determined that the plaintiff was entitled to relief against forfeiture. The regime would apply to the reinstated lease.

Held:

- (1) The court does not have jurisdiction to make orders varying the terms of commercial leases that are subject to the COVID-19 regime. It has no power to decide an appropriate outcome of the renegotiation, before the parties have had the opportunity to renegotiate the terms.
- (2) The decision that the court must now make does not neatly fall into any of the categories of action set out in the Retail and Other Commercial Leases (COVID-19) Regulation 2020 (NSW), cl 9. Nonetheless, it will be proper for the court to have regard to the leasing principles set out in the *National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19*, either on the basis of a liberal interpretation of cl 9, or on the basis that it is proper for the court, having regard to cl 7(4)(b), to have regard to the leasing principles set out in the Code wherever a decision that the court is required to make renders the leasing principles relevant.
- (3) The Court has the power to impose conditions that will be expected to have the result that the renewed lease will operate conformably with the proper implementation of the COVID-19 regime.