

BREXIT - NOT A FRUSTRATING EVENT FOR COMMERCIAL AGREEMENTS



Wendy Lambert
Partner



Ashley Quenault
English Solicitor

Introduction This briefing note provides a summary of a recent English case which was asked to determine whether the UK's decision, in principle, to leave the European Union could declare a commercial agreement as frustrated. More detailed guidance or advice on specific subjects is available on request.

Summary

The English court has recently ruled that Brexit will not frustrate a commercial lease.

Facts

The European Medicines Agency (the **EMA**) entered into a 25 year lease for its London Headquarters at 25-30 Churchill Place, London (the **Property**). At the time of writing the lease has 21 years left. The EMA pays £13 million per year in rent.

The EMA is an agency of the EU. Following the Brexit decision, the EU decided that the EMA should move from the Property to somewhere within the EU before Brexit happens..

In light of this the EMA argued that the Brexit decision had resulted in the lease over the Property being frustrated. Frustration is a legal expression that an unexpected event has occurred making a contract impossible to fulfil, or has drastically changed the original reason for signing it.

The High Court rejected this argument noting in particular that the EMA still had the ability to sublet the lease and could charge a sub-rent to cover the liabilities it owed.

Comment

This case highlights that getting a contract frustrated is an exceptional decision. It should also give parties comfort that the Brexit decision itself, should not affect commercial agreements.

Whether the Jersey Court will adopt a similar position remains to be seen, but the Jersey law position on frustration is in principle not too dissimilar to the English law position.

Contact:

This briefing is only intended to give a summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the contact details below.

Wendy Lambert, Partner
+44 (0) 1534 760 822
wendy.lambert@bcrlawjersey.com

Ashley Quenault English Solicitor
+44 (0) 1534 760 856
ashley.quenault@bcrlawjersey.com