

# Munich Regional Court – Tenant is entitled to rent reductions for disturbance of use due to Covid-19 restrictions

**Update** – In our Smart News edition dated 9 September 2020 we have discussed the judgement of Heidelberg Regional Court (30 July 2020 – file no. 5 O 66/20) that – alongside with Zweibrücken Regional Court (11 September 2020 – file no. HK O 17/20) has held that a disturbance of use of the leased object on account of Covid-19 related public law restrictions would not justify a reduction of rental amounts.

In contrast to this, Munich Regional Court takes an opposing view in its judgement dated 22 September 2020 – file no. 3 O 4495/20.

## Facts

The parties had entered into a commercial lease contract regarding retail premises for use as furniture store with a total lease area of approx. 2,929 sqm.

In the period 18 March to 26 April 2020, the tenant was not able to open the store to the public on account of Covid-19 lockdown.

In the period 27 April to 10 May 2020, the tenant was permitted to operate the store to a limited extent, i.e. on a sales area of only 800 sqm. In addition, only one customer max. per 20 sqm sales area was allowed in the store due to the prescribed distance and hygiene concept.

As of 11 May 2020, the customer restriction continued to apply while the sales area restriction expired.

The tenant suspended rent payments for April, May and June 2020. The landlord sued the tenant for unpaid rent.

## Ruling

Munich Regional Court ruled that the disturbance of use on account of Covid-19 related public law restrictions constitutes a material defect of the leased object, which entitles the tenant to rent reductions in proportion to the extent of use

disturbance amounting to (i) 80% of the total monthly gross rent for April, (ii) 50% for May and (iii) 15% for June 2020.

In its ruling, Munich Regional Court refers to four judgements of the German Imperial Court (*Reichsgericht*) dating from the time during or even before First World War. In one of these judgements, for example, the German Imperial Court observed that the tenant of a restaurant, which was also being used as a dancing bar, was entitled to rent reductions because dancing was restricted by the police after the beginning of the First World War.

Munich Regional Court finally but without further explanation held that the Covid-19 related public law restrictions do qualify as material adverse change (*Wegfall der Geschäftsgrundlage*), which entitles the tenant to an adjustment of the rent equal to the amounts of the rent reductions.

## LPA–Conclusion

The ruling of Munich Regional Court does not appear convincing to us.

According to general principles developed in (current) German jurisdiction, governmental Covid-19 restrictions should not qualify as a material defect of the leased object, given that they are not linked to the nature of the leased object. Rather, they are linked to the tenant's operational business, due to the fact that a retail store, being open to public traffic, facilitates the spread of Covid-19 infections. In general, the tenant bears the risk of business-related use restrictions or interruptions.

Having said this, it remains to be seen how German Higher Regional Courts (*Oberlandesgerichte*) will rule. Final clarity, however, will probably need to be brought by the Federal Supreme Court (*Bundesgerichtshof*).



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