

THE RENT IS NOT DUE DURING THE COVID-19 LOCKDOWN, SEVERAL ITALIAN COURTS RULE

With court order dated May 29, 2020, the Court of Rome tackled the issue of non-payment of the rent under a business lease agreement during the lock-down period. In this ruling, the Court stated that if the activity of the leased business (a retail shop, in the case at hand) is interrupted by order of the authorities, the agreement is affected by a temporary impossibility pursuant to article 1464 of the Italian Civil Code and the installments relating to the relevant period of suspension are not due. Nonetheless, the Court ruled that, as the lessee could still use the leased real estate as warehouse during the lock-down, part of the rent was still due, in proportion to the relevance of this residual use.

This ruling adds to other recent decisions of the Courts of Venice (decree no. 5042, May 22, 2020), Rimini (decree no. 6251, May 25, 2020), Genova (decree no. 3634, June 1, 2020) and Bologna (decree no. 5503, May 12, 2020) which, with a different approach, only justified delays in payments by the lessees.

The Court of Venice applied to this end article 91 of the Italian Law Decree no. 18/2020 (which provides that compliance with Covid-19 containment measures shall always be assessed for the purpose of excluding the obligor's liability for non-performance) to a long-term business lease agreement, ordering the real estate owner not to enforce the bank guarantee assisting its credit as lessor, and ordering the issuing bank not to proceed with the payment of the guarantee.

Likewise, the Court of Bologna, in a considering a similar case, ordered the real estate owner not to enforce the guarantees assisting its credit. In said ruling, the Court did not mention article 91 of the Italian Law Decree no. 18/2020, but still expressly linked the non-payment of the rent to the financial distress of the lessee caused by the lock-down measures and stated that, given those circumstances, no payment was due. Lastly, this same approach has been followed by mentioned decrees of the Court of Rimini and of Genova.