

Rent Problems of Merchants Caused by the Epidemic—— Rent Reduction for Merchants under COVID-19

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Abstract: In recent years, the COVID-19 epidemic has erupted across the country, resulting in business closure, business damage, and reduced income. As an important part of the loss, can merchants ask the lessor to reduce all or part of the rent? What is the legal basis? In order to solve these problems, we must first explore the legal nature of the epidemic. From the legal nature of the analysis of the epidemic and epidemic prevention policies, to the lessor, the government and the judicial organs, this paper will systematically explore in which circumstances the merchant has the right to request all or part of the rent reduction.

Keywords: COVID-19; Force Majeure; Change of Situation; Rent Reduction

Introduction

In February 2022, COVID-19 broke out again in Suzhou. In order to effectively contain the spread of the epidemic and protect the health and safety of citizens, the government immediately took prevention and control measures. During the epidemic period, except for the industries that ensure the normal operation of the city, those necessary for epidemic prevention, people's basic living standards and other important industries, the other industries have been suspended. Even if the resumption of work, the entertainment, catering, accommodation and other industries are still seriously affected.

No operating income also needs to pay the staff wages, rent, which makes the merchants miserable. As the bulk of the merchant expenses —— rent should be reduced, has been their concern. Although a number of developers announced the initiative to reduce the rent of merchants, but some homeowners made it clear that the bank does not reduce the mortgage, mobile does not reduce the phone charges, what is the basis for their rent reduction? How should the court deal with such disputes? Who will bear the loss caused thereby? To solve the above problems, it is necessary to make a comprehensive conclusion on the legal nature of the epidemic and the epidemic prevention and control measures. This paper plans to analyze and compare the two, and then explain the remedial measures for the impact of the epidemic and the epidemic prevention policies on the rent.

1. Legal definition of situation change and force majeure in the Civil Code

As a public health emergency, COVID-19 has brought many problems to the performance of contracts. Some scholars believe that COVID-19 can directly constitute force majeure in the performance of contracts, because it meets the requirements of force majeure. However, this is only a general judgment in the macro context. In specific cases, whether force majeure is the legal nature of the epidemic remains to be determined. In addition, due to the change of situation and the dual opposition of force majeure, the legal circle has launched a fierce debate on the legal nature of the epidemic, and there is no unified and recognized judgment mechanism in the judicial practice. In the context of the outbreak in 20 years, contract disputes have suddenly surged, and the complexity of specific cases and the uncertainty of laws and regulations have made the binary opposition of changing situation and force majeure become extremely unreasonable. Fortunately, with the timely promulgation of the Civil Code, the conflict problems of the situation change and force majeure have been fundamentally solved, which also enables the judicial organs to flexibly use the change of situation and force

majeure when dealing with specific cases.

1.1 Change of situation

According to Article 533 of the Civil Code of China, the change of situation must meet the following requirements: 1. The change of situation must be unforeseen by both parties when the contract is signed. The unpredictability of this article refers to the general unpredictability, that is, in the general cognition of the society. 2. The change of situation must be based on the facts, that is, the conditions of the contract shall change due to the fact of a material change and that the material change does not result from a commercial risk. The reason for the change of the situation usually refers to the abnormal changes in the international and domestic economic situation, such as the sharp rise and fall in prices and exchange rates, serious inflation, financial crisis, etc. 3. The facts dependent on the change of situation must be made after the signing of the contract and before the completion of the contract. If the fact of a change of situation at the time of the contract is signed, the parties are automatically willing to bear the risk of a change at the time of the situation, then the contract shall not require a change or termination. 4. The continued performance of the contract will make the contract not conform to the fairness principles in the civil law.

If the original contract violates the principle of fairness due to the change of circumstances and cannot continue to perform normally, the parties shall settle the contract through peaceful negotiation; If the contract dispute can still not be settled through peaceful negotiation, the party may request the arbitration institution or the people's court for permission to modify or terminate the contract, in order to eliminate the adverse consequences caused by the change of the situation. In this regard, the change of situation is the cause of the change or termination of the contract, but it should be noted that the change of situation is not the cause of no liability, and the adverse consequences caused by it shall be shared by both parties according to the principle of fairness.

1.2 Force majeure

According to Article 180 of the Civil Code, the scope of force majeure can be roughly divided into the following categories: government behavior, abnormal social events, and natural disasters. It can be seen that the formation of force majeure should have the following characteristics: 1. Unpredictability, that is, according to the law, the major changes after the two parties signed the contract must meet the general cognition of the society of the unpredictability. 2. Inevitable, that is, although the parties concerned have taken timely and reasonable measures for the occurrence of the accident, they cannot objectively prevent the occurrence of the accident. 3. Unpredictability, that is, the parties to the contract cannot overcome the objective losses caused by the major change. 4. During the performance of the Contract, the major change event constituting the force majeure must meet the conditions occurring after the conclusion of the Contract and before the completion of the performance.

According to the provisions of article five hundred and ninety of the civil code, force majeure can have the following legal consequences: 1, part or all exempted from liability, due to the influence of force majeure contract cannot continue to perform, can according to its influence on the extent of the parties to the contract from part or all liability for breach of contract, the parties to delay the performance of the contract obligations. 2. For the termination of the contract, if either party is simply unable to continue to perform the contract or the purpose stated in the contract conclusion cannot be realized due to force majeure, one party may directly inform the other party to request the termination of the contract.

1.3 The boundary division idea of the change of situation and the force majeure Change of situation and force majeure are easy to confuse, which should be grasped from the similarities and differences as follows.

The similarities are as follows: 1. Both cases have major changes, including externality, unpredictability and objectivity. 2. And the time of the two major changes is after the conclusion of the contract and before the completion of the contract. 3. Both parties may cause the legal consequences of modification or rescission of the contract.

Its differences are as follows: 1. Form theory, that is, starting from the form of the event itself. The situation change is mainly due to the major economic situation changes affecting the normal performance of the contract; the force majeure is mostly due to natural disasters or abnormal social emergencies. 2. Results theory, that is, from the degree of impact of the event on the contract. In the event

of a change of situation, the parties to the contract are still able to perform without considering the obvious unfairness of the continued performance of the contract. The situation of the change of situation is more complex, it belongs to the right to claim, after the change of the contract still cannot meet the balance of interests, the referee can be forced to terminate the contract, that is, the termination of the contract is the exception of the change of situation, and the change of the contract is general. The procedure is that both parties must go through consultation, and the negotiation fails must be determined by the fair discretion of litigation or arbitration. In general, the change of situation mainly repairs the serious imbalance of interests caused by external reasons, so as to achieve "payment balance" and make the contract flexibly performed or terminated by judgment based on fairness; but the force majeure system is reflected in the objective situation that the parties cannot perform or achieve the purpose of the contract. It belongs to the right of formation, that is, a party can only have to timely inform the other party that can not be protested, and they do not have to be determined by the fair discretion of litigation or arbitration.

2. Typing of COVID-19 epidemic and prevention and control measures

There are two main points on the nature of the COVID-19 epidemic and the prevention and control measures taken by the government: some scholars define the epidemic as unforeseeable, but strictly insurmountable sense, and that the epidemic is unforeseeable, unavoidable and insurmountable, which meets the definition of force majeure.

2.1 Relevant Regulations on SARS in 2003

When the outbreak of SARS in 03, the relevant departments of our country emergency formulated and issued the public health emergency ordinance and in article 2 gives the definition of public health emergency: public health emergency refers to the sudden occurrence, mass mass unknown disease, or cause or may cause serious damage to public health of major infectious diseases and other seriously affect social public health events. At the same time, the regulations also stipulate the epidemic monitoring system, information disclosure system and emergency response system. From these regulations, we can learn that SARS is one an unknown, highly infectious disease, and poses a great threat to people's lives and health.

In the same year the Supreme People's Court issued on during the prevention of SARS in accordance with the law of the people's court related trial, execution notice, according to the provisions of paragraph 3 of article 3, by the influence of SARS outbreak or epidemic prevention measures,

If the parties continue to perform the original contract will be unfair, can combine with specific cases, apply the principle of fairness. Due to the influence of the SARS epidemic situation or the epidemic prevention measures, if the contract party fails to perform it, it may be properly settled in accordance with article 117 and Article 118 of the Contract Law. It can be seen that the actual impact of SARS epidemic or epidemic prevention measures on the performance of the contract determines its legal nature.

2.2 The legal nature of the COVID-19 epidemic

Today's COVID-19 outbreak is very similar to SARS at the time, and the response is even more prominent. In 20 20, the COVID-19 epidemic was successively included in the Law on the Prevention and Treatment of Infectious Diseases and the Border Health and Quarantine Law, and it was identified as class B infectious diseases and took prevention and treatment measures for Class A infectious diseases. At the same time, many cities in China have timely launched the first-level response measures for major public health emergencies.

Recently, the Legislative Committee of the National People's Congress made a general explanation of the epidemic: the contract performance due to epidemic prevention and control is force majeure, so it can be learned that the performance of the contract is the key to determine the force majeure. Therefore, the author believes that the legal nature of the epidemic situation and the government's epidemic prevention measures should be analyzed in accordance with the actual impact on the contract. If the continued performance of the Contract will cause the fairness of the Contract.

3. Rent reduction for merchants under COVID-19

3.1 Preventive measures to the breach of rental contracts under the epidemic

When one party is unable to perform the contract normally due to the impact of the epidemic, it should change, re-sign or remove the contract through the principle of good faith through negotiation. If the negotiation fails, it can seek legal basis and support. Although the change of situation and force majeure provide a legal basis for the judicial application of action, but with the original intention of avoiding litigation, it is obviously the best way to solve the possible legal disputes in advance. Due to the huge cost of the decoration and renovation of the store in the early stage, even if they can finally win the lawsuit through litigation procedures, they have lost the possibility of continued cooperation with the lessor. Therefore, the author puts forward the following suggestions based on the characteristics of merchants and the guidance function of laws.

3.2 Guiding role of law:

For the lessor, because in line with the idea of equality and mutual benefit, adhere to the principle of fairness, and the merchant to face sudden changes together, to share the losses together. For merchants, first, first confirm whether the housing lease contract agrees on the relevant terms of the change of situation and force majeure, and if there is an agreement, it shall be performed according to the contract. 2. Because the lessor's control of real-time information cannot be estimated, the merchants are most familiar with the impact of the epidemic. Therefore, the merchant should contact the lessor in time, inform it of its current situation, and request the expected negotiation to jointly solve this problem.

3.3 Assistance from relevant government departments:

Relevant government departments should guide the disputes over rent reduction under the epidemic situation to avoid the deepening of the contradictions. 2. Relevant government departments should introduce relevant policies to subsidize merchants to reduce the losses caused by the epidemic to merchants, and also help the leaser and merchants to solve the problem of rent reduction through peaceful communication. Such as: Nantong finance bureau has issued by the Nantong clear outbreak rent exemption policy implementation rules during the epidemic prevention and control of rent reduction scope and measures to clear, Dongguan issued "about support guan companies overcome difficulties —— win the epidemic prevention and control war several measures", Dongguan more positive response to the call, more power enterprises and merchants

4. Assistance of the judicial organs:

Judicial organs should issue guiding judicial documents on legal disputes arising from the epidemic as soon as possible. For example, on April 11, 2022, the Shanghai High People's Court issued the document "12 Questions and answers of the Shanghai High People's Court on the Application of the Law in the Epidemic Contract Dispute Cases"

4.1 Legal measures to deal with may cause breach of rental contracts under the epidemic

Due to the government's strong policies and measures, the businesses renting the houses of state-owned enterprises and administrative institutions have a clear direction and way to deal with the housing rent during the epidemic period, and it is not necessary to request the change or termination of the contract through the force majeure and situation changes in the Civil Code. But for the merchants renting private houses, the government cannot ask the lessor to exempt or partially exempt the lessee from the rent, because the act itself violates the principle of fairness. In this regard, the author will rent houses into two categories through merchants with different property rights and give the following two different countermeasures.

1. After the National Development and Reform Commission issued on the response to COVID-19 outbreak further help small and micro enterprises and individual industrial and commercial households to ease the housing rent pressure guidance, local governments gradually introduced the implementation rules of rent reduction, such as Jiangsu requirements, state-owned housing in the county-level administrative region is not included in the medium-high risk areas in 2022, rent exemption, 3-5 months after rules listed as high risk

areas, on the basis of 3-5 months from the month. Those in the county-level administrative regions where state-owned houses are located have been included in medium-high risk areas in 2022 with free rent for 3-8 months. Here, the author will not list the implementation rules of the local rent reduction in detail, merchants can inquire the relevant policies of the location of the house, take the initiative to communicate with the lessor, and require the lessor to reduce or postpone the payment of the rent, according to the local policies. If the lessor is unwilling to reduce or delay the payment of rent in accordance with local policies, the merchant may file a lawsuit, and the people's court will, in accordance with Article 6 of the Guidance on Several Issues concerning the Proper Trial of Civil Cases involving COVID-19 in accordance with 19 4.2 Give support.

For 2, to rent private housing merchants, if expected to ease the pressure of rent is slightly complicated, in the two guidelines mentioned above we know, countries encourage the parties to solve the problem of the rent through friendly negotiation, if negotiation and the people's court mediation, the people's court combining the actual situation.

Therefore, the author suggests that the tenants renting private houses (hereinafter referred to as the merchant) should analyze the premises under or to be rented as soon as possible to determine whether the normal rent paid will be affected by the epidemic policy. If the merchants do fail to pay the rent during the epidemic period, they should further clarify the application of the terms of force majeure or clause.

If it is regrettable that the lessor and the merchant fail to form a unified opinion, and the litigation is inevitable, we can consider claiming the rights through litigation within the three-year limitation of action. At the same time, the government's epidemic prevention and control measures and turnover reduction under the COVID-19 epidemic should be proved, resulting in the failure to perform the rent agreed in the lease contract.

4.3 Suitable force majeure measures:

If the merchants affected by the outbreak, has been basically unable to pay shop rent during the outbreak, namely delay or partial performance pay rent during the outbreak is still can not realize, merchants can directly in writing or mail, the outbreak or epidemic prevention policy of force majeure events, so the epidemic or epidemic prevention policy cannot pay rent during the outbreak told the lessor, and in accordance with the civil code of the People's Republic of China to terminate the contract. If the other party of the contract has objections, the merchant may seek the professional advice of the lawyer, and may fix the evidence through the same steps above, and further request the court or the arbitration agency to confirm the validity of the termination of the contract (generally confirmed as delaying the payment of the rent or reducing part of the rent during the epidemic period).

Epilogue

Between the lessor and the merchant, the law is fair and just without favoritism, but there is reasonable reason in the law. The change of situation and force majeure in the law is intended to solve the contradictions caused by special circumstances. The epidemic is heartless and affectionate. On specific issues, we should be reasonable and solve the problems through friendly consultation in the spirit of overcoming the difficulties together and overcoming them together.

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