

## Real Estate Litigation and Counseling

# Recent Rulings in COVID-19-Related Lease Disputes



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Courts in three different jurisdictions recently handed down decisions against commercial tenants in disputes with their landlords over rent obligations during the COVID-19 pandemic, rejecting the tenants' common law defenses and interpreting the leases as written.

### Illinois State Court

***Ponte Gadea Chicago, LLC v. Banana Republic, LLC*, No. 20 L 6235 (Ill. Cir. Ct., Cook Cty Mar. 24, 2021)** – The landlord sued tenant Banana Republic for not paying rent during the pandemic. In response, Banana Republic raised fifteen common law defenses, including frustration of purpose and impossibility, and asserted a four-count counterclaim for breach of contract and common law theories on the ground that it was entitled to various rent credits during the pandemic. The court granted the landlord's motion to strike all affirmative defenses and counterclaims. The court held that the lease allocated risk between the parties, providing for rent abatement in certain circumstances, "but not when the store could not for some reason be opened for sale other than at the fault of the landlord." The court ordered that it would "not rewrite the parties' contract for them" given that the risk that [Banana Republic] might not be able to operate its store due to pandemic or governmental action was foreseeable (and in the latter case foreseen)," yet the parties "did not contract for cancellation of the lease or abatement of rent in such circumstances." The opinion is available [here](#).

### Utah State Court

***St. John Properties Utah, LLC v. Grove Tower BoxOffice, et. al.*, No. 200400976 (Utah 4th Dist. Ct. Mar. 15, 2021)** – The court granted summary judgment for a landlord on its claim for unpaid rent for office space, rejecting a tenant's defenses of impracticability and impossibility. The court found that the parties' lease did not contain a *force majeure* clause and that no provision governed risk allocation. Based on the parties' contractual relationship, the tenant effectively "risked an economic downturn during those ten years whether the downturn was precipitated by COVID-19 or some other event." The court also found that the tenant provided no evidence that the pandemic "directly caused" its alleged losses, the economic downturn was permanent, or the tenant was unable to fund its rent payments through a line of credit or insurance recovery. The opinion is available [here](#).

### New York Federal Court

***The Gap Inc. v. Ponte Gadea New York LLC*, No. 20 CV 4541-LTS-KHP, 2021 WL 861121 (S.D.N.Y. Mar. 8, 2021)** – The federal court held that the pandemic does not exempt The Gap from its rent obligations. Granting summary judgment for the landlord, the court rejected The Gap's arguments that its pandemic-related store closures and changes in foot traffic warranted release from its lease obligations based on the lease's casualty provision, frustration of purpose, impossibility, failure of consideration, and mutual mistake. The court found that The Gap still could offer some in-store shopping, curbside pickup, and online order fulfillment, noting that The Gap "points to no covenant in the lease in which [the landlord] made any guarantee regarding foot traffic, or the nature or demographic characteristics of the area of the Lexington Avenue store premises." The opinion is available [here](#).

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Conscious of the human, operational and financial strain that coronavirus is placing on businesses and organizations worldwide, Jenner & Block has assembled a multi-disciplinary Task Force to support clients as they navigate the legal and strategic challenges of the COVID-19 / Coronavirus situation.

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