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Azam v Violet Developments LLP & Ors: The Unfettered Discretion and the Million-Pound Bill

***Azam v (1) Violet Developments LLP; (2) Secure Trust Bank plc; (3) East End Homes Ltd* (Central London County Court)**

Date: 13 November 2025

Judge: Her Honour Judge Evans-Gordon

Key Words:

Relief from Forfeiture, Section 146 LPA 1925, Judicial Discretion, Culpable Delay, Waiver, Once and for All Breach, Conditions of Relief, Compensation, Disproportionate Windfall, Construction Covenants

Summary

The Claimant, Mr Mohammed Azam, forfeited the lease held by Violet Developments LLP (Violet), supported by STB [1]. The Defendants accepted forfeiture for breach of the obligation to provide written progress reports [1]. The principal issue was the terms for relief from forfeiture; the Claimant accepted relief in principle subject to conditions [1-3]. The court found Violet culpably delayed the development, due for completion by 13 June 2021, causing significant loss [118-119].

The court held that its discretion under s.146 LPA 1925 permits conditions relating to breaches not cited in the notice or occurring post-forfeiture [20-21]. Relief was granted on condition that Violet and/or STB paid or secured £1,432,721 plus interest and secured costs [150].

Key Themes:

1. ***Forfeiture and Relief from Forfeiture:*** *Reaffirmation that a right of forfeiture is security for covenant performance, not a penalty [1, 12, 13, 25(iv)-(v), 25(vii)-(ix)].*
2. ***Scope of Judicial Discretion:*** *Whether relief conditions may address breaches outside, or waived within, the s.146 notice [13-15, 20-21].*
3. ***Waiver:*** *Whether acts acknowledging the lease's continuation (e.g., leaseback discussions) waived the right to forfeit antecedent breaches [25(iv)-(v), 70-71].*
4. ***Contractual Construction and Breach:*** *Whether "as soon as reasonably practicable" was a once-and-for-all breach or continuing obligation [25(vi)-(vii), 25(x)-(xii)].*
5. ***Culpable Delay:*** *Distinguishing force majeure/other non-culpable events from Violet's culpable*

delay [25(xvii)-(xix), 79].

6. ***Disproportionate Windfall:*** *Relief should prevent landlords obtaining windfalls unrelated to actual loss [25(x)-(xii1(b)), 142].*

Background

Mr Azam purchased the property, 100 Violet Road, around 1997 and, after obtaining planning permission for commercial space and 73 residential flats, decided to sell a long lease to a developer [5]. On 14 December 2015, a 999-year lease was granted to Violet Developments LLP, owned by Gary Porter, following an earlier agreement with Kingport Investments LLP [5]. The arrangement stipulated that Violet would develop the property, and Mr Azam would then take a commercial lease of the ground floor and basement, with Violet selling the residential flats [5].

The development was a "self-build" managed by Violet's associated main contractor, Formosa Construction LLP [7]. Numerous delays affected the project after demolition took place in August/September 2016 and works commenced in November 2016 [4(vii), 8]. Key causes of delay included:

1. Mr Azam’s request in July 2017 to increase the basement depth from 4.5m to 6m, requiring non-material planning alteration [9].
2. The necessity to reroute HV electricity cables serving a substantial part of London [4(vii)(c), 9, 78(c), 93, 99].
3. The discovery of an unidentified 600 mm utility pipe [4(vii)(d),9, 78(d)].
4. Difficult ground conditions, high water table, and subsequent remediation works due to a partial collapse of Violet Road [4(vii)(e)-(f), 9, 78(e)-(f)].
5. The redesign of the exterior due to construction regulation changes following the Grenfell tragedy [4(vii)(g), 9, 78(g), 107-108].
6. The COVID-19 pandemic and the impact of Brexit on labour and materials [4(vii)(i), 9, 69, 78(i), 112, 115].

The Claimant served the section 146 notice on 16 December 2021 [1, 11]. Although a Practical Completion Certificate was eventually obtained on 25 June 2024, Violet became balance sheet insolvent, and STB (the lender) had advanced over £25.55 million, expecting a minimum loss of £10 million [10, 12].

Legal Issues and Analysis

Construction Covenant and Breach (Issues i, v, vi, vii)

The court determined that the relevant time covenant was paragraph 5.2.5.4, which required Violet to complete the Works "as soon as reasonably practicable" once commenced [59, 61]. The judge rejected the Claimant's argument that paragraph 5.2.4 (setting a two-year long-stop date) applied, finding that 5.2.4 was directed at a different scenario involving a subsequent planning application to increase residential flats, which did not occur [58-59, 61].

The court confirmed that the "as soon as reasonably practicable" obligation, if breached, created a **once and for all breach**, in line with superior court decisions, unless the contract indicated otherwise [25(viii)-(xii)]. The judge found no inconsistent provision, meaning the breach was single and occurred when the practical completion date was objectively missed [25(x)-(xii)(b)].

Waiver (Issue iv)

The court found that Mr Azam had knowledge of Violet's failure to complete the development as soon as reasonably practicable prior to November 2021 [70]. The Claimant's solicitor's letter of 25 November 2021, which referred to completing the leaseback of the commercial premises, was an unequivocal act acknowledging the continued existence of the Lease [70]. Therefore, the right to forfeit for the once-and-for-all breach of failure to complete "as soon as reasonably practicable" was **waived** [71].

Culpable Delay Findings

The court analysed the pleaded events to determine the total non-culpable delay:

Cause of Delay	***Finding on Non-Culpable Delay (Weeks)***
Travellers Incursion	0 (did not cause delay to the project) [87]
Design Dispute (caused by Mr Azam)	10.5 (initial allowance for design dispute) + 12 (post-demolition dispute) = 22.5 (implied total time allowance) [90-91, 118]
HV Cable Rerouting (UKPN)	55.5 (entirely beyond Violet's control) [93]
Unidentified Utility Pipe	2 (attributed to removal/backfill time) [95]
Deeper Basement (Mr Azam's request)	8.5 (Phase 1) + 6 (Phase 2) = 14.5 [96-97, 100]
Remediation to Boundary Piles/Road Collapse	9 (remedial works prompt action) + 5 (road collapse) = 14 [103, 105]
Grenfell Redesign	19 (due to regulatory change) [108]
COVID-19	3 (shutdown) + 5 (2020 impact) = 8 [111-112]
Substation/Pump Chambers Redesign	0 (delay was within Violet's control) [110-111]
Meter Connection (UKPN)	27 [116]
Total Non-Culpable Delay	**140.5** [118]

The court calculated that the development, originally expected to take 94 weeks, should have been completed by **13 June 2021** (94 weeks + 140.5 weeks non-culpable delay from the construction start date) [118].

Width of the Discretion for Relief (Issue x)

The judge ruled that the court's statutory discretion under s.146 is **very wide** and permits the imposition of conditions for relief that extend beyond the breaches relied on in the s.146 notice, including compensation for waived breaches or post-forfeiture losses [20-21, 146]. This approach is consistent with considering "all the circumstances and the conduct of the parties" and ensuring the landlord is not disadvantaged (the Hyman v Rose principle) [21].

Loss and Damage (Issue viii)

The Claimant's recoverable losses that formed the conditions of relief were calculated as follows:

1. **Loss of Ground Rent**: £286,875 (capital value of the residential flat reversion, which was lost due to the coming into force of the Leasehold Reform (Ground Rent) Act 2022 after the delayed completion date) [121, 146].
2. **Lost Rent on Commercial Premises**: £85,000 per annum (ground floor average) + £107,900 per annum (basement) = £192,900 per annum [58, 61]. This loss, calculated from 13 June 2021 to the date of judgment (4 years and 7 months), totalled £851,975 [146(iv)].
3. **Incomplete Commercial Works**: The net cost to complete the commercial premises to the required shell and core standard was £181,346.28, calculated after deducting the sum Mr Azam agreed to pay for Landlord's Works [141, 146(ii)].

4. **Lost Rent During Completion Works**: An estimated £112,525 for seven months required to complete the commercial works [146(iii)].

The court dismissed the claim that Violet was liable for the £500,000 penalty owed by Kingport under the Agreement for Lease, finding that Violet never agreed to take on that specific contractual burden [67, 147-149].

Conclusion

The court granted the applications for relief from forfeiture by Violet and/or STB [149-150].

The judgment noted that refusing relief would provide Mr Azam with a "**wholly disproportionate windfall**," particularly at STB's expense, given that the development had been substantially completed post-forfeiture and its value increased enormously [142].

The relief was granted on the following conditions [149-150]:

1. **Payment of Compensatory Sums**: Violet and/or STB must pay or provide security for the total sum of £1,432,721 (comprising the losses calculated above, plus interest on certain sums) [146, 150].
2. **Security for Costs**: Security for Mr Azam's costs was required in the sum of £1,100,000 [150].
3. **Completion of Residential Works**: Violet must complete the parapet works and snagging works to the residential flats [150].
4. **Commercial Works**: Violet was not required to complete the works on the commercial premises (as Mr Azam will be in possession as sub-tenant and has been awarded funds to complete them), thus limiting the scope for future dispute [145].

Key Takeaway:

*The most significant takeaway from this judgment is the affirmation of the **wide and unfettered nature of the court's statutory discretion** under s.146 of the Law of Property Act 1925 [20-21]. The court may leverage this power to impose conditions for relief that require the tenant to compensate the landlord for all losses related to the lease, even those stemming from breaches waived by the landlord or breaches not originally cited in the forfeiture notice, provided the conditions are required to do equity between the parties and prevent a windfall [21, 23, 146].*

This function acts like a comprehensive safety net, ensuring that when a court grants relief, it effectively reconstructs the financial relationship as if the breach had never occurred, thereby protecting the landlord's interests while simultaneously avoiding the unjust enrichment of the landlord by obtaining the property's increased value due to the tenant's subsequent work [23, 142]. It avoids forcing the landlord to pursue separate, possibly worthless, claims for damages against an insolvent tenant (Violet) [16-17, 21].

Parting Thoughts

The case illustrates the court's willingness to exercise s.146 discretion to reach a commercially fair outcome. Despite substantial non-culpable delay (140.5 weeks), Violet breached the obligation to complete "as soon as reasonably practicable," a once-and-for-all breach subsequently waived by the landlord [25(x)-(xii)(b), 70-71].

Financial recalibration lay at the centre of the judgment: relief was granted only on payment of £1.432m plus security for costs and completion of residential works. This restored the economic

balance and prevented a disproportionate windfall [142, 146].

The decision re-emphasises that s.146 is a broad mechanism enabling the court to prevent either party using forfeiture as a windfall or a weapon, resolving a complex development dispute through principles of equity rather than procedural rigidity.

#K10CL392 #ReliefFromForfeiture #S146LPA1925 #WideJudicialDiscretion #WaiverOfBreach #CulpableDelay #PropertyLaw #LeaseholdReformAct2022 #CompensatoryDamages #ConstructionDisputes #ConstructionLaw #DisputeResolution #LegalUpdate #CaseLaw #DDAlegal

Authorities

Case Law:

Scope of Judicial Discretion and Conditions for Relief *(Prioritised as the central legal issue of the judgment)*

1. ***Hyman v Rose*** *[1912] AC 623 – The court's discretion under Section 146 (and its statutory predecessors) is* ***very wide*** *and courts may not place fetters upon its exercise. The court must consider "all the circumstances and the conduct of the parties". Conditions for relief may relate to covenants unconnected to the forfeiture.*
2. ***Çukurova Finance International v Alfa Telecom Turkey Limited (Nos 3 to 5)*** *[2013] UKPC 20 – The statutory discretion is wider than the old equitable jurisdiction. The object in granting relief is to put the landlord back in the position he would have been in if the lease had not been forfeited.*
3. ***Vauxhall Motors Ltd v Manchester Ship Canal Co Ltd*** *[2019] UKSC 46– The right to forfeit is security for the enforcement of a primary obligation. Equity intervenes where the forfeiture right secured the performance of some other covenant, and the covenantor is now able to perform it and pay compensation. The discretion is constrained within "principled boundaries".*
4. ***Southern Depot Co Ltd v British Railways Board*** *[1990] 2 EGLR 39 – The court's discretion permits imposing conditions for relief that do not relate to the s.146 breaches and that may postdate the forfeiture. A disproportionate windfall to a landlord weighs heavily in favour of relief.*
5. ***Associated British Ports v CH Bailey plc*** *[1990] 2 AC 703 at 708B-D)– Relief may be granted without requiring the breach to be remedied, provided a payment in lieu is made in an appropriate case.*
6. ***Peachy v Duke of Somerset****(1721) Fin PR 568 – Cited as establishing the fundamental principle that equity intervenes where the right to forfeit was conferred to secure the performance of some other covenant, and the covenantor can now perform it and pay appropriate compensation.*
7. ***Shiloh Spinners Ltd v Harding****[1973] AC 691 – Conditions for relief may include requiring a tenant to carry out work to the demised premises.*
8. ***Bland v. Ingrams Estates Ltd (No 2)****[2001] EWCA Civ 1088; [2002] Ch 177, 184 – Cited for the principle that the landlord is entitled to be put in the position he would have been in but for the forfeiture. Conditions for relief may include payment of any increased rent resulting from rent review during the period prior to the grant of relief.*
9. ***Thomas v Ken Thomas*** *[2006] EWCA Civ 1504– A case concerning forfeiture for non-payment of rent (s.138 CCA 1984), holding that the court could not require the tenant to pay rent arrears where the right to forfeit had been lost (waived). The judge noted this case is not applicable to the wider discretion under s.146.*

10. ***Maryland Estates Ltd v Joseph***[1998] EWCA Civ 693*; [1999] 1 WLR 83 – In s.138 cases, payment of all rent falling due in the "twilight period" must be paid before relief is obtained, not just the arrears relied on for forfeiture.*
11. ***Freifeld v West Kensington Management***[2015] EWCA Civ 806*; [2016] L&TR 5 at [47] – A disproportionate windfall to a landlord is a factor which weighs heavily in favour of relief being granted.*

Nature of Construction Covenant Breaches

1. ***First Penthouse Ltd v Channel Hotels and Properties (UK) Ltd*** *[2003] EWHC 2713 (Ch); [2004] L & TR 27 – A covenant which obliges completion 'as soon as reasonably practicable' (or by a given time) constitutes a* ***once and for all breach*** *unless there is an inconsistent provision in the lease.*
2. ***Farimani v Gates*** *[1984] L.R.L.R. 472– Superior courts have repeatedly held that an obligation to perform an act by a given time creates a single obligation and not a continuing one.*
3. ***Equitas Ltd v Walsham Bros & Co Ltd***[2013] EWHC 3264 (Comm)*– Superior courts have repeatedly held that an obligation to perform an act by a given time creates a single obligation and not a continuing one.*

Principles of Contractual Construction and Materiality

1. ***The Tropical Zoo Limited v The Mayor and Burgesses of the London Borough of Hounslow*** *[2024] EWHC 1240 (Ch)– Cited as a summary of contractual construction principles. Also cited regarding waiver: a right to forfeit is waived where a landlord, with knowledge of the facts, performs an unequivocal act recognizing the continued existence of the lease, communicated to the tenant.*
2. ***Rainy Sky v Kookmin Bank***[2011] UKSC 50*– Contractual construction is objective, considering the language used and the background knowledge reasonably available to the parties.*
3. ***Arnold v Britton*** *[2015] UKSC 36– Contractual construction involves considering the likelihood of rival constructions by assessing which is more consistent with business common sense.*
4. ***Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd*** *[2023] UKSC 2– Cited as summarising the modern approach to contractual construction.*
5. ***Monsolar IQ Ltd v. Woden Park Ltd***[2020] EWHC 1407 (Ch)*; [2022] 2 P. & C.R. 10) – The court may read instruments non-literally, correcting obvious drafting errors where it is clear what the parties must have intended.*
6. ***Brooke Homes (Bicester) Limited v Portfolio Property Partners Limited*** *[2021] EWHC 3015 (Ch) at [97]– The meaning of "all reasonable endeavours" usually means "all reasonable paths or actions to be exhausted" and is generally less strict than "best endeavours".*
7. ***Fitzroy House Epworth Street (No) Ltd v. Financial Times Ltd*** *[2006] EWCA Civ 329– Materiality of a breach must be judged objectively by considering the context of the clause, the nature of the breach, and the consequences flowing from the breach.*
8. ***Riverrock European Capital Partners LLP v. Harnack*** *[2022] EWHC 3270 (Ch)– Materiality of a breach must be judged objectively by considering the context of the clause, the nature of the breach, and the consequences flowing from the breach.*

General Forfeiture, Equity, and Post-Forfeiture Liability

1. ***Associated Deliveries Ltd v Harrison*** *CA [1984] 2 EGLR 76; [1985] 50 P & CR 91 – Following*

forfeiture (where relief is not granted), a landlord cannot recover rent, only mesne profits or damages for trespass; the tenant is not liable for breaches that post-date a valid forfeiture.

2. ***Jervis v Pillar Denton Ltd****[2014] EWCA Civ 180– Where a tenant remains in a property for its own commercial advantage, the landlord is entitled to the full value ("you can't have the penny and the bun").*
3. ***Dendy v Evans*** *[1910] 1 KB 263 – If relief is granted, the landlord may then sue on breaches occurring during the "twilight period" (the time between forfeiture and the grant of relief).*
4. ***Liverpool Properties Ltd v. Oldbridge Investments Ltd*** *[1985] 2 E.G.L.R 111 at p.112 – As against the tenant, a lease is not terminated by service of proceedings, so long as there is a subsisting application for relief from forfeiture.*
5. ***Mount Cook Land v Media Business Centre*** *[2004] 2 P. & C.R. 25 – Relief from forfeiture resurrects the lease term retrospectively; the lease only terminates if an order for possession is made.*
6. ***Magdeev v Tsvetkov*** *[2020] EWHC 887 (Comm)– Referenced in the context of the judge declining to draw adverse inferences against the Porters, noting the difficulty of applying the "narrow rule" regarding uncalled witnesses.*
7. ***Transfield Shipping Inc v. Mercator Shipping Inc*** *[2008] UKHL 48 – Cited regarding damages: the loss must be the type of loss contemplated by the parties when the lease was entered into.*

Legislation:

Forfeiture and Relief from Leases *(Prioritised as the core jurisdiction and source of the court's discretion)*

1. ***Law of Property Act 1925 (s.146)*** *– This section restricts the right of re-entry or forfeiture for a breach of covenant, mandating that the lessor must first serve a notice specifying the breach, requiring a remedy (if possible), and requiring monetary compensation. Crucially, it grants the court the power to grant or refuse relief to the lessee, having regard to "all the other circumstances," and to grant it on such wide terms as to "costs, expenses, damages, compensation, penalty or otherwise" as the court thinks fit. The court noted that its statutory discretion under s.146 is "very wide" and broader than the old equitable jurisdiction.*
2. ***County Court Act 1984 (s.138)*** *– This Act governs cases concerning forfeiture for non-payment of rent. It establishes a "wholly different statutory regime" from s.146, not least because s.138 mandates relief upon payment of arrears and costs. The statute also requires payment of all rent falling due in the "twilight period" (between forfeiture and relief) before relief is obtained.*

Leasehold Reversion Value *(Prioritised as a major head of quantifiable loss)*

1. ***Leasehold Reform (Ground Rent) Act 2022*** *– This Act's coming into force (on 30 June 2022) is critical because it resulted in the loss of value of the freehold reversion on residential flats sold after that date, as no ground rent would be payable.*

Town Planning and Procedure *(Prioritised for establishing the technical completion timeline)*

1. ***The Town and Country Planning (Development Management Procedure)(England) Order 2015*** ***("the 2015 Order")*** *– This Order sets out the requirements for the "final disposal" of a planning application, specifically referencing Article 40(13). The planning authority relied on this Order when recording an historic determination of an application.*

2. ***Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992* (“the Regulations”)** – *Regulation 6(2) of the Regulations requires the planning authority to determine an application within eight weeks of receipt. Regulation 7 grants a right of appeal if the planning authority refuses the application or fails to determine it within that eight-week period. The court found an earlier planning application had been determined pursuant to these Regulations well before the date of the Lease.*

Legal Texts & Commentary:

1. ***Henderson*** – *Cited for the principle that all matters in dispute between the parties should be addressed in one claim, supporting the court's wide discretion to determine all associated losses.*
2. ***Lease Management, Forfeiture, and Remedies*** *(Prioritised as covering the central issues of the judgment)*
3. ***Megarry & Wade: The Law of Real Property*** *at 17-06 – This text outlines the fundamental purpose of the right of forfeiture: it is intended to provide* ***security for performance*** *of the tenant’s covenants, and not to operate as an additional penalty for breach.*
4. ***Woodfall on Landlord and Tenant*** *– The text provides comprehensive principles governing leasehold management and forfeiture:*
    1. ***Waiver:*** *A right to forfeit is waived where a landlord, having knowledge of the facts upon which the right of forfeiture arises, performs an unequivocal act (objectively considered) recognising the continued existence of the lease, which is communicated to the tenant.*
    2. ***Once and for All Breach:*** *A covenant that obliges completion ‘as soon as reasonably practicable’ is a once and for all breach unless there is an inconsistent obligation in the lease.*
    3. ***Wide Discretion:*** *The discretion to grant relief from forfeiture is a wide one.*
    4. ***Landlord's Position:*** *The general principle governing the formulation of terms for relief against forfeiture is that the landlord is entitled to be put in the position he would have been in but for the forfeiture.*
    5. ***Lease Termination/Resurrection:*** *As against the tenant, a lease is not terminated by service of proceedings so long as there is a subsisting application for relief from forfeiture. Further, relief from forfeiture resurrects the lease term retrospectively; the lease will only have terminated if an order for possession is made.*

Damages and Foreseeability

1. ***Chitty*** *– This commentary addresses damages, stating that the question of whether a particular loss is recoverable turns on whether it is the* ***type of loss which was contemplated by the parties*** *when the lease was entered into.*

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CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012

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