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Business

Judge rules restaurant can't be forced to pay pandemic rent

Shop ordered closed in state's lockdown

By Tim Logan and Janelle Nanos
GLOBE STAFF

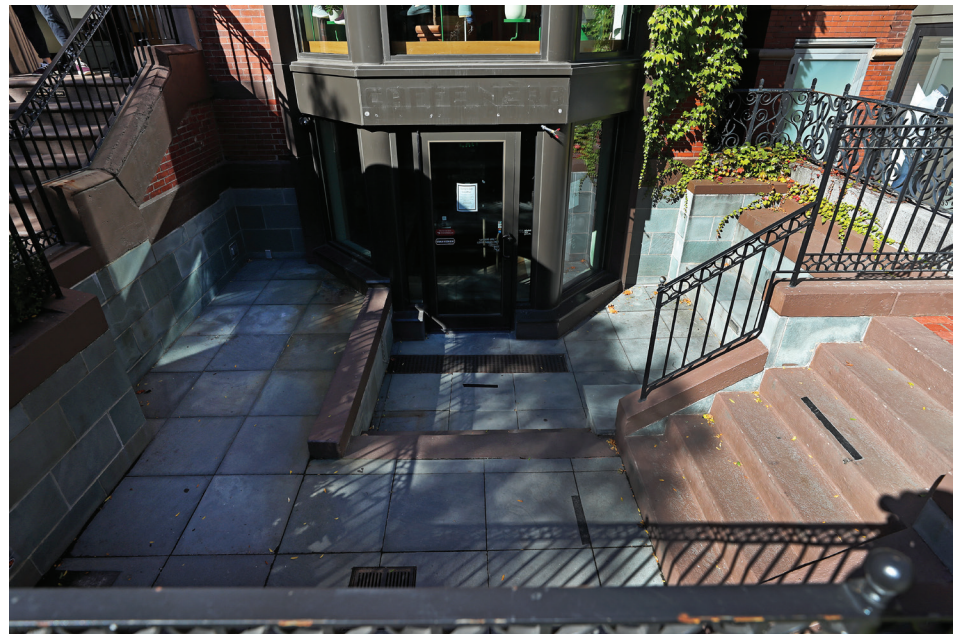
Beleaguered Boston restaurants scored a small win this week when a Suffolk County judge ruled that a Back Bay landlord can't collect rent that went unpaid during last year's COVID-19 shutdowns.

Superior Court Judge Kenneth Salinger ruled that a Caffe Nero shop on Newbury Street did not have to pay back rent for the nearly three months last spring when indoor dining was halted under state orders to combat the spread of COVID-19. The Newbury Street location ultimately closed in October — business was flagging even after it reopened — but the ruling could give leverage to struggling restaurants in sometimes-thorny lease negotiations as the pandemic drags on.

"This decision might encourage landlords and tenants to try and work things out," said Andrea Martin, an attorney with Burns & Levinson who represented Caffe Nero. "It's not going to be a clear-cut case where landlords just automatically get their rent."

The dispute between Caffe Nero and UrbanMeritage, a prominent Back Bay landlord that owns a number of storefronts on Newbury Street, began not long after Governor Charlie Baker ordered indoor dining closed on March 24 — a serious blow for a European-style cafe whose business model hinges on people lingering over espresso and croissants.

Caffe Nero promptly asked for a break on its roughly \$13,000-a-month rent. UrbanMeritage said no, and promptly put the shop in default for nonpayment. By June, UrbanMeritage had launched eviction proceedings, ultimately filing a lawsuit seeking more than \$300,000 in back rent, damages,



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A closed Caffe Nero on Newbury Street in Boston had a faded sign over the doorway and an empty patio last October.

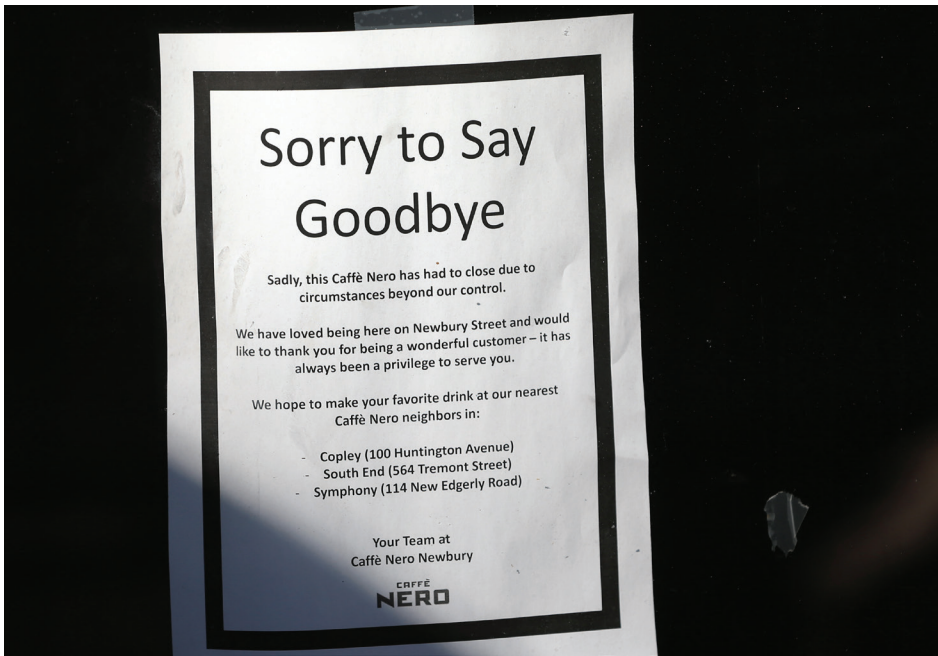
and legal fees. That same month, Caffe Nero reopened the store, first for outdoor seating, then inside. Business remained well below pre-pandemic levels, and UrbanMeritage "made it clear" it wanted Caffe Nero out, the chain said in a court filing. So in October, Caffe Nero removed the walk-in freezer and handed back the keys. It was the only one of the company's 30 US locations — mainly in Greater Boston — to permanently shutter, Martin said. (The London-based chain has hundreds of locations in Europe.)

"We just weren't able to have an open dialogue with them," Martin said. "It wasn't a two-way street."

Attorneys for UrbanMeritage, which last

summer also engaged in a high-profile lease dispute with Kenmore Square restaurant Eastern Standard, did not return messages seeking comment Thursday.

Salinger's ruling — which only covers the three months that indoor dining was ordered closed, not the following months that Caffe Nero also didn't pay rent — could have broad implications for restaurants and retailers who have struggled with shutdown orders, and for landlords who depend on their rent to pay the bills. A similar lawsuit involving a Beacon Hill SoulCycle studio is also moving through Suffolk County court, in a case which could shed light on how courts view rent for non-restaurant tenants.



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Caffè Nero on Newbury St. left a sign for its customers.

Lawyers and brokers for retail tenants and landlords alike have spent the last year renegotiating leases, with unpaid back rent from the early months of the pandemic often a significant hurdle. A ruling like this could help the restaurant industry, said Mike Firestone, a representative of Massachusetts Restaurants United.

"The pandemic and months of mandated business closures were unforeseeable ca-

tastrophes," he said. "This well-reasoned decision is a significant victory and a potential model for struggling restaurants and other shuttered businesses that have sought rent relief and basic fairness from their landlords."

But Stephen Pleines, a broker with Eastern Land Company, which has an office on Newbury Street, said it's hard to determine

whether one court ruling could have an effect on other landlord-tenant relationships, in part because the structure of each lease is different and multinational chains signing them often have deep pockets.

"I don't know that one ruling would necessarily serve as a precedent," he said. But it could give some pause. "At the end of the day, the landlord that thinks he's going to kick his tenant out and get another tenant in to pay more doesn't have a valid expectation in this market."

Indeed, storefronts up and down Newbury Street and other downtown retail districts are still empty as the pandemic approaches the one-year mark. UrbanMeritage is currently listing for rent Caffè Nero's old space — for which the coffee chain signed a 15-year-lease in 2017. The landlord and Caffè Nero will now likely negotiate over the rest of the rent still owed.

But the ruling, Martin said, sends a clear message.

"For us," Martin said, "The takeaway is that you're not going to be rewarded for being greedy right now when a company is just trying to get by."

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