

Game over for non-payment of rent in administrations

For many years, the established practise was that if Administrators and Liquidators were in beneficial occupation of leasehold premises, a “pay as you go” arrangement existed in respect of on-going rent.

In 2009, the case of Goldacre (Offices) Limited established the principle that Administrators were not required to pay rent until after the next quarter date, giving almost an entire quarter rent free. This led to many administrations commencing soon after the quarter date (with a moratorium commencing shortly before the quarter date so that landlords could not take any action). Unsurprisingly, landlords felt that this position was inequitable and prejudiced their interests.

In 2013, the case of Luminar Lava Ignite Limited further clarified the position in relation to post administration rent in that it was decided that if an administration ran over a rent quarter, the entire quarters rent was payable even if the Administrators only required the property for a few days. For creditors this seemed like a windfall for a landlord who had provided very little in return.

The principles established in both Goldacre and Luminar were recently brought before the Court of Appeal in the case of Jervis v Pillar Denton Limited Re: Game Station. The background was that Game went into Administration on 26 March 2012, the day after the quarterly rental payment date thus depriving a number of landlords of rent totalling approximately £10 million. The Court of Appeal favoured the argument put forward by a consortium of Game’s landlords and overturned the principles set out in Goldacre and Luminar.

The Court of Appeal found that were an Administrator or Liquidator makes use of a property for the purposes of administration or liquidation, then rent is payable as an expense for the period during which the property is used. The date upon which a quarters rent becomes due is irrelevant and an Administrator or Liquidator will be required to pay rent based upon the actual usage of a property.

It is hard to argue that the decision does not strike a fair balance between the rights of landlords and the interest of creditors as a whole although the decision will certainly lead to smaller returns to unsecured creditors.

Administrators will now need to factor in rent as an expense of continuing to trade and are more likely to abandon marginal properties. Concern has been expressed that the ruling may have a detrimental effect upon the rescue culture leading to an increase in high street closures as Administrators become more cautious about trading. Whether there will be an overall drop in the level of Administrations remains to be seen but hopefully, the decision will lead to a more positive relationship between landlords and Insolvency Practitioners.

Please note that should your clients require any confidential advice regarding this or any other insolvency matter they are welcome to contact one of our Partners. An initial consultation is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.