

This week will hopefully see the end of a long running battle between Britain's biggest landlords and the restructuring profession. On 12 February, the Court of Appeal will start to hear an appeal relating to the administration of *Game Station (Jervis v Pillar Denton)*. It will consider whether the administrators should pay rent for the properties which they occupied during the administration as an administration expense, so ensuring the landlords receive their rent in priority to payments made to other creditors.

Background

Before 2009, when a company in administration occupied a leasehold property for the purposes of the administration, the administrators would agree to pay the rent from the date of the administrators' appointment to the date that the property was vacated. Any arrears which were outstanding when the administrators were appointed were an unsecured debt.

This position changed with the decision in the *Goldacre (Offices) Ltd v Nortel Networks UK Ltd (In administration)* [2009] EWCH 3389 (Ch). The court held that the rent could not be apportioned. If a quarter's rent fell due during the administrators' occupation, the whole quarter's rent should be paid as an expense. The result of this decision was that:-

- An administrator appointed the day after a quarter day can use the property until the next quarter day without paying any rent, and
- An administrator appointed the day before a quarter day, who only used the property for a week, has to pay the whole quarter's rent as an expense.

Consequently, where it was possible to plan in advance when administrators were appointed, the practice developed of appointing a few days after a quarter day. However, there are always cases where appointments have to be made as a matter of urgency - eg due to pressure from other creditors, such as HMRC - and such planning is not possible so rent may have to be paid as an expense regardless of usage. Neither of these scenarios seemed particularly equitable to the landlord community or the creditors of an insolvent business.

Since leases will typically provide that the landlord can insist upon all arrears being cleared before consenting to an assignment, there is clearly a commercial negotiation still to be had in relation to certain of the premises where the Administrators had found buyers willing to take over. For those landlords where the buyer does not wish to take an assignment of their premises, this issue will be much more pertinent.

The High Court upheld the *Goldacre* decision in another case called *Leisure (Norwich) II Ltd v Luminar Lava Ignite Ltd (in administration) and others* [2012] EWCH 951 (Ch).

Game Station Appeal

This situation is now being challenged by a group of landlords - Hammerson, British Land, Land Securities and Intu Properties (formerly Capital Shopping Centres). The landlords are asking the Court of Appeal to overturn the *Goldacre* and *Luminar* decisions. The landlords will argue that the quarter's rent roll of circa £12m should be paid to them in full, notwithstanding that it had fallen due for payment the day before the companies were put into administration.

The Game company that is now in occupation of the various units and/or responsible for the arrears will argue that *Goldacre* and *Luminar* were correctly decided, and that the original ruling should stand.

For more information on the issues in the appeal see our June 2013 [bulletin](#). For discussion about the *Goldacre* decision see our January 2010 [bulletin](#) and the article by Dan French published by Insolvency Intelligence in April 2010, [Landlords and administrators: a shift in the balance of power?](#)