INSOLVENCY BULLETIN

24 February 2014

Rent as an Administration Expense

Re Game Retail Limited;
Pillar Denton Ltd & Ors v Jervis & Ors [2014] EWCA Civ 180

The Court of Appeal has now given judgment in the long-awaited case of *Re Game Retail Limited*. Predictably, the court has followed the route of expediency and held that, where an officeholder occupies a leasehold property for the purposes of the administration or the liquidation, the company's liability to rent accrues as an expense of the administration. Furthermore, in assessing the liability, the rent is to be treated as accruing on a daily basis and not by reference to the period during which rent accrued prior to the liquidation or administration of the company – to this extent it will be a matter of fact to determine the period for which the officeholder will be required to pay for the company's occupation.

In coming to this conclusion the Court of Appeal expressly overruled both of the earlier decisions in *Goldacre (Offices) Ltd v Nortel Networks UK Ltd* and *Leisure (Norwich) II Ltd v Luminar Lava Ignite Ltd*. In *Goldacre*, the court had held that a company in administration was in the same contractual position as regards its lease as it was prior to administration. This meant that rent continued to fall due in accordance with the lease (which would usually be on the quarter days) and, if such a date does not fall within the period of administration, no liability will accrue to the company or the administrator. Any arrears of rent falling due before the appointment of administrators would simply fall to be dealt with as an unsecured claim.

Whilst the *Goldacre* rationale had a certain logical attraction and a simplicity, it created a great deal of uncertainty. There were two problems with Goldacre: first, if the appointment of administrators could be carefully timed to fall the day after the quarter day, the administrator could enjoy a quarter's rent-free occupation of the property at the landlord's expense. Secondly, the landlord's position is exacerbated by the fact that, by virtue of the administration moratorium, he can do little to prevent the administrator exploiting the situation during which time the landlord would be stripped of all the usual protections and remedies available to landlords. In effect, the landlord could be substantially funding the administration process for the benefit of secured creditors with no recompense for himself.

The position has now reverted to what was the traditional approach of the insolvency profession in the days of trading receiverships: if the officeholder occupies the company's premises rent accrues as a trading expense and is payable in respect of the officeholder's actual occupation. This approach is fair, proportionate and measurable. It does mean that IPs will need carefully to factor the liability to pay rent into any cashflow forecasts but it does also provide certainty which is the most important factor of all.

If you have any queries in relation to this, or any other, matter, please do not hesitate to contact us.

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